

Comm-036



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



January 21, 2010

Dane L. Finerfrock, Director
Utah Division of Radiation Control
P.O. Box 144850
Salt Lake City, UT 84114-4850

Dear Mr. Finerfrock;

We have reviewed the proposed changes to the Utah regulations R313-25-8, received by our office on January 6, 2010. These regulations were reviewed by comparison to the equivalent Nuclear Regulatory Commission (NRC) rules in 10 CFR Part 61. We discussed our review of the regulations with you on January 21, 2010.

As a result of our review, we have three comments that have been identified in the enclosure. Please note that we have limited our review to regulations required for compatibility and/or health and safety and the identification of program elements that create conflicts, duplications or gaps in the orderly pattern of regulations on a nationwide basis (See the 1997 Policy Statement on Adequacy and Compatibility of Agreement State Programs). Under our current procedure, a finding that the Utah's regulations meet the compatibility and health and safety categories of the equivalent NRC regulation may only be made based on a review of the final Utah regulations. However, we have determined that if your proposed regulations were adopted, incorporating our comments and without other significant change, they would meet the compatibility and health and safety categories established in the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA-200.

We request that when the proposed regulations are adopted and published as final regulations, a copy of the "as published" regulations be provided to us for review. As requested in FSME Procedure SA-201, "Review of State Regulatory Requirements," please highlight the final changes, and provide a copy to Division of Materials Safety and State Agreements, FSME.

The SRS Data Sheet summarizes our knowledge of the status of other Utah regulations, as indicated. Please let us know if you note any inaccuracies, or have any comments on the information contained in the SRS Data Sheet. This letter, including the SRS Data Sheet, is posted on the FSME website: <http://nrc-stp.ornl.gov/rulemaking.html>.

The NRC would also like respond to the *Statement of Basis for Administrative Rulemaking*, dated December 1, 2009 which is part of the December 8, 2009 Radiation Control Board Information Packet as posted on your website and e-mailed to Duncan White on December 10, 2009. The Statement notes that the Utah Radiation Control Board "intends to issue a determination . . . about whether there are 'corresponding federal regulations that are not adequate to protect public health and the environment of the state.'" Statement of Basis at 11. The Statement of Basis also concludes that NRC has recognized "the inadequacy of its current regulations." Statement of Basis at 8. Your characterization of NRC's regulations and conclusions regarding their adequacy is in error. Although the current regulations did not consider the disposal of significant quantities of depleted uranium, they are adequate to ensure

the protection of the public health and safety. The requirements in 10 CFR Part 61 Subpart C provide the performance objectives that all disposal facility licensees must comply with before disposing of any low-level radioactive waste. The NRC's recommendation to update a site's performance assessment prior to disposal of significant quantities of depleted uranium would ensure that the licensee continues to comply with these requirements; a recommendation to ensure compliance with the existing regulations does not indicate that the regulations are inadequate. The NRC's rulemaking effort will clarify these requirements and provide additional guidance to licensees and the Agreement States that are dealing with the disposal of unique waste streams, but engaging in a rulemaking to update the NRC's regulations does not mean that the current regulations are inadequate to protect the public health and safety while rulemaking is pursued to improve the regulations.

If you have any questions regarding the review, the compatibility and health and safety categories, or any of the NRC regulations used in the review, please contact Kathleen Schneider, State Regulation Review Coordinator at 301-415-2320 (kathleen.schneider@nrc.gov) or Dennis Sollenberger at 301-415-2819 (dennis.sollenberger@nrc.gov).

Sincerely,

 for T. Reis

Terrence Reis, Deputy Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials
and Environmental Management Programs

Enclosures:
As stated

COMPATIBILITY COMMENT ON UTAH PROPOSED REGULATIONS

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
1	R313-25-8 (2)(a)	61.13	N/A		<p>Technical analyses Definition of Depleted Uranium</p> <p>To clarify the proposed Utah regulation so that it comports with NRC Comment 3 below, Utah should revise R313-25-8 (2)(a) as follows:</p> <p>(2)(a) Any facility that proposes to land dispose of significant quantities of concentrated depleted uranium, more than one metric ton in total accumulation, after [effective date of rule] shall submit for the Executive Secretary's review and approval a performance assessment that demonstrates that the performance standards specified in 10 CFR Part 61 and corresponding provisions of Utah rules will be met for the total quantities of depleted uranium and other wastes, including wastes already disposed of and the quantities of concentrated depleted uranium the facility now proposes to dispose. Any such performance assessment shall be revised as needed to reflect ongoing guidance and rulemaking from NRC. For purposes of this performance assessment, the compliance period will be a minimum of 10,000 years. Additional simulations will be performed for a qualitative analysis for the period where peak dose occurs.</p>
2	R313-25-8 (2)(b)	61.13	N/A		<p>Technical analyses Definition of Depleted Uranium</p> <p>To clarify the proposed Utah regulation so that it comports with NRC Comment 3 below,, Utah should revise R313-25-8 (2)(b) as follows:</p>

STATE SECTION		NRC SECTION	RATS ID	CATEGORY	SUBJECT and COMMENTS
					(2)(b) No facility may dispose of significant quantities of concentrated depleted uranium prior to the approval by the Executive Secretary of the performance assessment required in R313-25-8(2)(a).
3	R313-25-8 (2)(c)	61.13 40.4	N/A	H&S A	<p>Technical analyses Definition of Depleted Uranium</p> <p>Utah's proposed regulation redefines depleted uranium as "waste with depleted uranium concentrations greater than 5% by weight" and creates conflicts with the definition of depleted uranium in 10 CFR 40.4, which is Compatibility Category A designation. Since the other provisions in R313-25-8 (2) address significant quantities of depleted uranium, the following change would eliminate the conflict: "For purposes of this R. 313-25-8(2) only, <u>concentrated</u> depleted uranium means waste with depleted uranium concentrations greater than 5 % by weight."</p> <p>Utah needs to add the phrase "concentrated" as noted above to R313-25-8 (2)(c) to meet the Compatibility Category A designation assigned to Section 10 CFR 40.4, Definition of Depleted Uranium.</p>