

OPTIONS FOR IMPROVING TRANSPARENCY IN THE 10 CFR 20.2002 PROCESS

There are a number of specific actions NRC could take to improve awareness and understanding or to involve those directly affected by a 10 CFR 20.2002 disposal (see Attachment 4 for a listing of these). In the options below, the staff has presented what it believes to be logical groupings of these various activities, covering a range of staff resources to implement and additional time for staff review and approval, for Commission consideration.

Option 1

Under this option, staff would take no additional actions to improve transparency. It is presented as a baseline against which to compare Options 2 and 3.

Information on specific 10 CFR 20.2002 disposal requests is currently available to the public through Agencywide Documents Access and Management System (ADAMS) and the public document room. Its availability is similar to that for other NRC authorizations granted to licensees. This information typically consists of the incoming request, correspondence between NRC staff and the licensee, and final approvals consisting of an environmental assessment, a Finding of No Significant Impact, and a safety evaluation. However, there is little or no background information on the 10 CFR 20.2002 disposal provision written for the public, either in NUREGs or on the NRC public web site. With respect to public involvement, the current 10 CFR 20.2002 review process allows for some participation by stakeholders, principally the affected States that are given an opportunity to comment on a draft of the environmental assessment (EA) for any proposed disposal. The staff's Finding of No Significant Impact from the EA, that describes the staff's basis for such a conclusion and gives information on how to obtain the relevant documents, is noticed in the *Federal Register*.

For materials and fuel cycle licensees, the Office of Nuclear Material Safety and Safeguards (NMSS) and the Regions typically approve 10 CFR 20.2002 requests with a license amendment, and thus there is an opportunity for an informal hearing. For reactor licensees, however, NRC approves 10 CFR 20.2002 disposals with a letter, without amending the license, and thus there is no opportunity for a hearing for all these requests. The staff or the licensee, at its discretion, may provide opportunities for public input, depending the circumstances and interest.¹ In the case of the 10 CFR 20.2002 request from the licensee for the Big Rock Point plant in 2001, for example, the Office of Nuclear Reactor Regulation (NRR) held its own meeting, and participated in town meetings sponsored by the licensee, in which the State and other stakeholders participated.

¹ See NRC's January 21, 2005, letter, to the Snake River Alliance, (ML050120480) which provides a rationale for using letter approvals for reactors. Separately, the staff will investigate whether fuel cycle and materials licensee 10 CFR 20.2002 approvals should be consistent with reactor approvals, and report the results to the Commission.

Advantages

This option would save resources that would otherwise be spent on Options 2 or 3, since no new efforts would be made to enhance public understanding and awareness, or to provide for increased stakeholder comment on proposed 10 CFR 20.2002 disposals. In addition, maintaining the status quo could be seen as appropriate for the small number of 10 CFR 20.2002 requests received each year (an average of three and up to seven), the low-risk significance and environmental consequences of these disposals, and the need to be consistent with the treatment of other NRC approvals of licensee requests.

Further, many of the 10 CFR 20.2002 disposals are similar to other disposals of radioactive materials in landfills and hazardous waste facilities that occur routinely in the U.S. (See Enclosure 2 for a partial listing of these facilities). Finally, this option enables NRC to respond to 10 CFR 20.2002 requests, consistent with the needs and circumstances for the specific request. Where warranted, the staff would, as it did for the Big Rock Point 10 CFR 20.2002 authorization, participate in and/or conduct public meetings.

Disadvantages

Maintaining the status quo would mean that basic information on 10 CFR 20.2002 authorizations, tailored to members of the public, would not be generally available which could perpetuate any misunderstandings or lack of awareness of the use of this provision that currently exists. Aside from information provided in responses to requests from the public or in public meetings that might be held in connection with specific 10 CFR 20.2002 proposals, there would be little opportunity for members of the public to understand this provision in the regulations and how it is implemented. Also, some stakeholders might argue that the general lack of interest to date (with certain exceptions) is caused by the lack of readily available information.

Maintaining the status quo would also potentially place NRC in a reactive position for future such authorizations where there was significant public interest.

Option 2

10 CFR 20.2002 requests can range from proposed onsite disposals of small quantities of waste that will decay to background levels by the time of decommissioning, to offsite disposals of tens of thousands of cubic meters (millions of cubic feet) of demolition debris at a local landfill that has never accepted such waste before. The assumption underlying this option is that although additional measures for transparency are desirable, a graded approach that recognizes the significant differences in the types of 10 CFR 20.2002 disposals is appropriate. Under current practice, the staff already may allow for increased interactions with the public when justified. However, this option would both greater background information for the public on 10 CFR 20.2002 disposals in general, and would also define a more systematic approach for interacting with the public than the current approach. This option has the following elements:

- The development of the standard Agency communication tools (fact sheets, backgrounders, communication plans, etc.) that would provide generic information on 10 CFR 20.2002 disposals for the public. (See Attachment 5 for details on these tools). This information would also be integrated into NRC's waste disposal pages on the public web site.

- The issuance of a *Federal Register* notice announcing the receipt of a significant 10 CFR 20.2002 request, along with a communication plan for that specific request.² A public meeting could be included in the Communication Plan, depending on the circumstances.
- The formalization in an agency procedure(s) of the interactions between and among the licensee, NRC, the State permitting agency (when disposal is in a permitted facility), and the disposal facility operator, for significant 10 CFR 20.2002 authorizations, to ensure adequate communication regarding the proposed disposal.

A principal component of this approach is the use of existing Agency communication tools, which have not been used to date for 10 CFR 20.2002 authorizations. In developing these tools, the staff would provide generic information such as:

- Why 10 CFR 20.2002's authorizations are needed.
- The history of 10 CFR 20.2002 in NRC regulations.
- How safety is assured when NRC reviews a 10 CFR 20.2002 request.
- How any potential environmental impact is evaluated.
- What materials are typically disposed of under 10 CFR 20.2002 and their relative hazards.
- How 10 CFR 20.2002 disposals are similar or dissimilar to types of radioactive wastes and their disposal (e.g., technically enhanced naturally occurring radioactive material (TENORM) and higher-activity LLW).
- How to get additional information from NRC.

In addition to generic information being developed and posted on the public web site, the staff would implement extra outreach measures for 10 CFR 20.2002 requests that were significant. Listed below are preliminary criteria that would guide decisions on whether additional outreach measures were necessary. A request would not be considered significant and no special measures would be needed when:

- The proposed disposal will be in a facility that routinely disposes of large quantities of similar radioactive materials, in accordance with its permit;
- The proposed 10 CFR 20.2002 disposal involves small quantities and concentrations of materials (e.g., incinerator ash from research facilities disposed of in accordance with Policy and Guidance Directive 8-10, "Disposal of Incinerator Ash as Ordinary Waste");
- The proposed disposals involve a high degree of certainty that the scenarios and assumptions used for the dose analyses are appropriate, based on past approvals, and will ensure that doses will be within "a few mrem/yr" exposure to a member of the public; or,
- The proposed disposal is on a licensee's site.

Notwithstanding the above guidelines, there could also be instances in which a public meeting was warranted, based on requests from the public, elected officials, the State, the licensee, or

² Sites undergoing decommissioning already have communication plans, which would be revised to address the specific 10 CFR 20.2002 request.

for other reasons. The staff does not expect most of the 10 CFR 20.2002 approval requests received to require any expanded effort. In the resources section, based on the history of 10 CFR 20.2002 disposals approved by NRC, the staff has assumed there would be one request each year that did not meet the above criteria and would require enhanced outreach measures.

Another component of this option that is different from current practice would be to enhance communications and coordination among the licensee requesting the authorization, the disposal facility operator, and the State and/or local permitting agency for certain proposed disposals, and to document these interactions in a staff procedure. In determining whether measures were necessary, staff would consider the criteria listed above and responsible agencies' desire for involvement, along with staff's need to understand permit conditions, dose scenarios, etc., pertinent to its review. Currently, NRC provides a copy of the draft EA for a proposed 10 CFR 20.2002 disposal to the affected States for comment, near the end of the review process. NRC's interactions during the review have often been with the licensee only and there is no defined process for involving the State (before the draft EA is prepared) or facility operator. Although the licensee has primary responsibility for ensuring the safety of such disposals, under this option, the staff would provide for periodic communications early and throughout NRC's review with all three of these entities. These efforts would include placing the responsible agency and disposal facility operator on distribution for correspondence, such as requests for information, and periodic conference calls to discuss the status of the review. Also, if a proposed disposal were on private property, the procedure require that the landowner was informed of the request and NRC's actions.

Advantages:

Using the Agency's existing communications tools is a structured and efficient way for communicating with the public. There is extensive guidance available to the staff on developing these tools, and many models for the staff to follow. The information in these documents would also fill a void, since there is no generic information written for the public on these types of disposals at this time. In addition, 10 CFR 20.2002 authorizations logically fit within the low-level waste (LLW) disposal web page, since it is a subset of the methods by which LLW is disposed. The current LLW page only addresses Part 61 disposal facilities. Such information would also promote awareness of risk-informed regulation of radioactive materials, by discussing how and why some types of low-activity LLW can be disposed of in facilities other than a Part 61 facility. This information would also be useful to the staff in responding to stakeholder inquiries, participating in meetings with the public, ensuring that staff communications are effective, and would make these future efforts more efficient, since background material would be available for use. This option would require relatively few resources to implement, and most of the resources needed would be a one-time expense. The staff expects that a minimal resources would be needed annually to update the communication tools and web site.

Disadvantages:

As noted in Option 1, aside from two cases in the last 5 years, there has been little public interest in these types of disposals by the public and, thus, investment of resources may not be appropriate when the Agency's other goals of safety and effectiveness are considered. NRC only processes about three to seven such requests each year. This option assumes that one request each year would require a public meeting. Holding a public meeting requires significant resources to notice the meeting, pay for travel expenses, develop and deliver presentations and

respond to comments. A public meeting will also add a month to six weeks to the review schedule. Finally, implementing these additional measures for outreach could set a precedent for other types of waste disposals, including new provisions currently being developed to address the disposal of 11e.(3) and 11e.(4) byproduct material.

Option 3

Under this option, 10 CFR 20.2002 authorizations would be treated like other high-visibility NRC activities, such as the renewal of a power reactor license, the licensing of an enrichment plant, or any other activity for which there is high public interest. The underlying assumption for this option is that, notwithstanding the safety and other arguments presented earlier in this paper, significant steps should be taken to make information readily available and to seek public input. Under this option, all 10 CFR 20.2002 disposal requests from licensees would have new transparency measures, including onsite disposals and other more routine actions such as disposal incinerator ash in landfills. In addition to including all of the items in Option 2, this approach would also provide for “real-time” information on the NRC public web page regarding the status of all 10 CFR 20.2002 reviews. NRC’s web site would have a page devoted to 10 CFR 20.2002 requests under review, including links to pertinent documents in ADAMS. Some of NRC’s major licensing actions use web pages that are models for the types of information and design that could be used. They include nuclear power plant license renewal applications³ and applications for new uranium enrichment plants.⁴ Also included in this option would be the approval of reactor 10 CFR 20.2002 requests with a license amendment, rather than a letter. This change would provide another mechanism for the public to be involved.

Advantages:

In addition to the advantages discussed under Option 2, providing “real-time” information on the status of 10 CFR 20.2002 reviews and relevant documents, would allow stakeholders to determine quickly and efficiently how a review was progressing, obtain important documents related to the request, and understand what opportunities there might be to provide input to NRC’s review. If such information were available it might mitigate the types of concerns that were expressed by members of Congress and other stakeholders regarding the proposed disposal by the Connecticut Yankee licensee in 2005.

Disadvantages:

The staff believes that there are several significant disadvantages with this option, in addition to those identified under Option 2 (Option 3 includes Option 2 activities as well). The level of effort to develop and maintain a web page with information on specific requests would be comparatively large (0.3 full-time equivalent (FTE) per year), when considering the risk and safety significance of 10 CFR 20.2002 disposals with other licensing activities that employ this approach. A further reason is that, to date, such extensive web pages have been reserved for major NRC licensing actions, such as license renewals for nuclear power plants and license

³ See <http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html>

⁴ See <http://www.nrc.gov/materials/fuel-cycle-fac/gas-centrifuge.html>

applications for new uranium enrichment facilities. NRC does not presently develop such web pages for applications for materials licenses. Thus, developing such a web page would be inconsistent with other NRC regulatory actions. Further, the level of interest in such requests varies and, in many cases, the staff expects that there would be little or no interest in the content on the web pages. The initial resources to develop this option (including the “real-time” web page, e.g.) would consume somewhat more than 10% of the fiscal year (FY) 2007 budgeted resources for the LLW program. This option could also require significantly more resources if a reactor hearing were necessary. A hearing would also extend the review time significantly.