

**Kennedy, James**

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**From:** Susan Jablonski [Susan.Jablonski@tceq.texas.gov]  
**Sent:** Friday, February 17, 2012 7:40 PM  
**To:** Persinko, Andrew  
**Cc:** LLW Forum, Inc.; Kennedy, James; Kayla Evans; Lorrie Council  
**Subject:** RE: Draft BTP on Concentration Averaging and Encapsulation

Andrew,

As an active member of the LLW Forum representing the State of Texas, I rely on the LLW Forum as an important source of information and sounding board for issues related to low-level radioactive waste management and disposal. On February 8-9, 2012, a LLW Forum Working Group met to review the U.S. Nuclear Regulatory Commission's (NRC) Draft Branch Technical Position on Concentration Averaging and Encapsulation (Draft BTP) and associated comments among the group participants. Two representatives from NRC participated in the meeting, as did officials from NNSA/DOE and myself. As part of the discussion, the NRC staff requested e-mailed comments to compliment the verbal dialogue held last week. The comments below are provided to fulfill that request.

The draft BTP, although guidance, could be the precursor to rulemaking in many areas. Although the draft BTP adds a sentence in the introduction in response to comment that it is expected that Agreement States that regulate processing and those that regulate disposal \*would consult one another\*, this is the only reference to how this will be applied across the states. Without NRC leading the way to foster this cooperative approach, the statement falls short of having any impact. There is a disconnect between the regulation and inspection at the point of waste generation/processing and the implications for the regulation at the disposal sites. A passive approach to coordination will leave a disconnect related to classification of waste and regulation of that waste from the handling/processing licensee to the disposal licensee.

It is difficult to foresee impacts of making changes at this critical time in just approaching opening of the commercial Texas disposal facility. There are both practical and perception issues for the possible implementation of provisions of this draft guidance. The draft BTP should include more discussion of possible impacts other than those identified in the inadvertent intruder scenarios to provide other consideration for implementation of provisions.

Below are several categories of additional comments on the draft BTP for your consideration.

Thank you for the opportunity for ongoing discussions and for NRC staff participation with the LLW Forum.

Sincerely,  
Susan

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A. Blending

Texas has a rule in place against reclassification of waste due to the intentional mixing for any purpose. When the Texas rule was put in place decades ago, there was no distinction between dilution and blending. With BTP as guidance and in discussions with NRC staff, it is assumed that the state's compatibility with blending approaches will have little to no effect on this Texas policy.

A related issue in the blending discussion is the attribution of waste generator to a processor. This is a possible side-effect of blending that is problematic for disposal states. There are state requirements for identification and record-keeping of each original waste generator.

The possible attribution to another entity at any point in the waste processing cycle complicates the disposal state fulfilling its responsibility for identification of waste generator.

The footnote on blending for avoiding extreme measures to lower waste classification misses the mark of providing necessary guidance that should be considered by NRC. The footnote was added in response to comment but does not provide guidance as to how this might be identified and implemented.

#### B. Increase in Sealed Source Activity

It is unknown what the implications of the significant increases for sealed source disposal will be in Texas. The pressure for Texas to open up sealed source disposal to allow for these increases specifically on at the commercial disposal facility owned by the State of Texas, as well as alternative disposal of even larger sources, is already evident. It is difficult to make such a shift to increase sealed source disposal at this critical time in just approaching opening of the Texas disposal facility, with the immediate consideration and review of intrusion scenarios that are less restrictive than currently considered.

It appears the focus is on changes for larger commercial sealed source disposal in sited states. The scope of this issue should not solely focus on the back-end disposal remedy for sealed sources. If front-end issues are not also addressed in recognition of their impact to future available options, the problem will not be solved.

Also in regard to sealed sources, it seems prudent for NRC to address the intentional destruction of sealed source in order to meet the blending definition and requirements.

#### C. Absorbed Liquids

The Texas license does not specifically prohibit absorbed liquids, although it is a topic of ongoing discussion. Since Texas might be alone in allowing absorbed liquids into a low-level disposal facilities (with other sites currently prohibiting), there should be some discussion of how long sorption can be relied upon in NRC analysis in the draft BTP where the possible presence of free-liquids in the future could impact the analysis. There is little information available to the sited states on this subject, other than the institutional memories of having problems in the past operational experience that are assumed to have led to prohibitions on absorbed liquids.

#### D. Factor of 10

Hotspot detection that could be difficult to practically accomplish in many cases. This provides another disconnect between the regulation and inspection at the point of waste generation/processing and the implications for the regulation at the disposal sites.

This might be an area that the disposal states would want to keep the factor of 10 (as Barnwell has in its license). What are the implications for sited states in taking this approach as far as the differences between the draft BTP and say using the Rule of 10 at

Barnwell? Knowing the practical implications for Class B & C waste disposal is important for the policy considerations for possible implementation of this change for the high-end Class B & C waste nationwide.

#### E. Alternative Approaches

Although NRC has opened up these alternative options in the revised BTP, it does not address the underlying reasons why sited states have not taken these considerations up to this point. By less reliance on standard acceptance criteria approved by sited state regulators, there is a level of confidence given to the abilities and resources available to every waste generator/processor shipping for disposal. For sited states, these are licensed entities which they largely do not regulate nor have impact over waste handling and classification decisions.

#### F. Regulation by Disposal States

For disposal states, waste for disposal comes from generators/processors that they do not regulate nor have impact over waste handling and classification decisions. Other state regulators and the NRC who do have authority over generators/processors, have different regulatory emphasis than the sited states and are independent.

Even if it is assumed that the NRC-prescribed consultation occurs among regulators on each decision, there are inherent drivers that will always impact how disposal concerns from disposal states regulators are considered and potentially acted upon.

Although the NRC guidance in the revised BTP is primarily designed for generators, who are required to certify that they meet the Class A, B, or C waste classifications in Part 61, it should be noted that the sited states may be burdened with increased costs to ensure compliance.

#### G. Recommendations for Consideration

There should be a more focused public outreach in each of the disposal states, in order to discuss the practical implications of the changes and possible waste disposal alternatives to be considered. The NRC could hold public meetings in each of the disposal states and should use the sited state interested party notification lists to alert the public and other stakeholders.

The draft BTP should discuss and support independent or joint point-of-origin inspections of waste processors by the sited states. The NRC should sponsor BTP regulatory oversight training classes for sited state personnel and for states with waste processors. The NRC should include sited state personnel as IMPEP team members for audits of states with waste processors.