

ECA Files Comments Supporting DOE Efforts to Evaluate Proposed HLW Interpretation NRC, States and Locals Agree More Information and Engagement Needed

On January 9, 2019, the three-month public comment period for the Department of Energy's (DOE) proposed interpretation of the statutory term high-level radioactive waste (HLW) closed.

In its submission, the Energy Communities Alliance (ECA) states, "a renewed sense of urgency and a willingness to consider technically defensible alternatives based on science is necessary and paramount. ECA believes DOE's proposal on the interpretation of HLW could present such an alternative."

ECA published an FAQ on DOE's interpretation of HLW in the October/November 2018 bulletin.

ECA noted strong support from its local government and community members for DOE's efforts to move forward with its proposed interpretation of the definition of the statutory term "high-level radioactive waste" (HLW) as set forth in the Atomic Energy Act of 1954 and the Nuclear Waste Policy Act of 1982. By shifting to base disposal decisions on actual radiological characteristics and risk to human health arising from the waste, rather than artificial former policy standards that base waste classification on origin, ECA expects DOE could:

- Reduce years of DOE operations and risks to current host communities;
- Accelerate Hanford, Idaho, **West Valley** and Savannah River tank retrievals and closures;
- Decrease the number, size and duration of storage facilities pending availability of a permanent deep geologic HLW repository; and
- Save taxpayers an estimated \$40 billion or more on DOE's Office of Environmental Management program's remaining lifecycle costs.

However, ECA emphasizes that as part of making any clarification, DOE first needs to provide more information, specifically data and policy direction. Currently every site has questions regarding the change in interpretation, including the actual impact to each site and community that would be affected; the feasibility of amending existing consent orders, permits and agreements with the states; and potential cost and cost savings. This information is necessary in order to build trust, build support, and avoid legal challenges.

In support of moving forward, ECA offers DOE seven near-term recommendations: 1. DOE must be transparent and meaningfully engage host communities, state regulators, Tribes and the broader public in the decisionmaking process.

2. DOE should complete and release an evaluation of the feasibility, costs, and cost savings of classifying covered defense nuclear waste as other than HLW, such as outlined in Section 3139 of the National Defense Authorization Act for Fiscal Year 2018 . <https://www.congress.gov/bill/115th-congress/house-bill/2810/text/pcs>

3. DOE should revise its radioactive waste management policy (DOE Order 435.1) to clarify that waste will be managed and dispositioned according to its characteristics, not its origin.
4. DOE must work directly with the State of New Mexico on a permit modification for the Waste Isolation Pilot Plant (WIPP) to remove the blanket prohibition on tank waste and wastes managed as HLW so that if it meets the applicable requirements it can be disposed of at WIPP.
5. DOE (and Congress) should provide full funding for WIPP capital asset projects to resume the full range of waste disposal capabilities and ultimately increase capacity.
6. DOE should begin work on a number of pilot projects and waste management policy evaluations to better understand alternative approaches and inform future policy decisions.
7. DOE must analyze the impact at each site and communicate it to the public.

See ECA's full comments <http://www.energyca.org/s/ECA-Comments-on-DOEs-Interpretation-of-HLW-January-9-2019.pdf> on DOE's proposed HLW Interpretation.

ECA's request for additional data and analysis was widely shared in other comments submitted on the proposal. At the state level, there were also a number of common concerns.

The State of Washington voiced the strongest opposition, including a letter signed by Washington Governor Jay Inslee and Attorney General Bob Ferguson "urging [DOE] to abandon the current proposal," recommending instead that DOE "engage directly with states, like Washington, that house DOE Environmental Management facilities on any issues of waste reclassification or treatment."

The State of Idaho expressed concern over the appearance that DOE's proposal appears to "imply unilateral authority to determine what wastes are to be considered as HLW and non-HLW, irrespective of the position held by the states which host the affected waste streams," a concern echoed in comments by the State of Oregon and the State of Washington.

Similarly, the South Carolina Department of Health and Environmental Control (SDHEC) notes their position that, "the proposed DOE interpretation does not and must not exempt HLW in South Carolina from currently applicable SCDHEC permits, orders, agreements, and approved closure plans." All four also questioned how existing legal agreements would be impacted and honored, and noted the need for more information on the impact at each site (in regards not only to what might be shipped offsite, but also what might ultimately remain on-site). As noted by the State of Nevada, the "set of statements lack requisite specificity and clarity needed to evaluate and compare the range of reasonable and appropriate disposal options for reprocessing wastes."

Environmental groups have expressed opposition, worried that the proposal will lead to lesser cleanup. For example, Geoffrey Fettus, at the Natural Resources Defense Council (NRDC) said under the proposal DOE is "unlawfully proposing to give itself the authority to 'reinterpret' what is high-level radioactive waste" and asserted that it will pose increased public and environmental risk. NRDC worked with a coalition of public interest groups around Hanford, where the majority of DOE's reprocessing wastes reside to gather 2,000 comments and petitions urging to DOE to drop its proposal. Meanwhile, the

Editorial Board of a local newspaper, the Tri-City Herald, issued its support to consider DOE’s proposal, noting, “We join with other Tri-City leaders, scientists and engineers close to the issue who say nuclear waste should be defined by its characteristics and risk, and not its origin.”

The staff of the Nuclear Regulatory Commission (NRC) also provided comment to DOE, also raising the issue of DOE’s authority. According to an article in The Energy Daily, “NRC staff said that ‘the law explicitly gives NRC—not DOE—the authority to decide what other nuclear wastes are sufficiently dangerous as to require disposal in a deep repository to protect public health and the environment...’” In addition, NRC staff expressed concerns about the impact on disposal of Class C waste, and the extent to which DOE’s proposed interpretation may not require DOE to remove the key radionuclides to the ‘maximum extent practical,’ from the tanks at Hanford. NRC staff does, however, outline suggestions on how best to address these concerns.

As DOE continues to review comments and determines how best to proceed, what is clear from the public comment period is the need for more data before there can be support for implementing DOE’s proposed HLW Interpretation. Section. 3139 of the 2018 National Defense Authorization Act called on DOE “to conduct an evaluation of the feasibility, costs and cost savings of classifying covered defense nuclear waste as other than high-level waste without decreasing environmental, health or public safety requirements.” That report is now one year past due, but based on the comments reviewed thus far, preparing it, sharing it and engaging meaningfully with impacted stakeholders is clearly the next step.

See also:

*Comments from the State of Oregon *

<https://www.oregon.gov/energy/safety-resiliency/Documents/2018-12-28-ODOE-Letter-Reclassify-Waste.pdf>

* Comments from the State of Washington*

https://www.governor.wa.gov/sites/default/files/FinalStateCommentsonHLW-FRNotice_1-4-19.pdf?utm_medium=email&utm_source=govdelivery

* Letter from Washington Governor Inslee and Attorney General Ferguson *

https://www.governor.wa.gov/sites/default/files/Gov-AG-DOE-LtrCommentsRe_InterpretationofHighLevelWaste.pdf?utm_medium=email&utm_source=govdelivery

*Tri-City Editorial, “Not all nuclear waste is the same. It shouldn’t be treated that way.” January 25, 2019. *

<https://www.tri-cityherald.com/opinion/editorials/article225059070.html>

* NRC Staff Comments*

<https://www.nrc.gov/docs/ML1901/ML19010A136.pdf>