

NUCLEAR REGULATORY COMMISSION

[NRC-2018-0066]

Dry Storage and Transportation of High Burnup Spent Nuclear Fuel**AGENCY:** Nuclear Regulatory Commission.**ACTION:** NUREG; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing NUREG-2224, “Dry Storage and Transportation of High Burnup Spent Nuclear Fuel.” The NUREG provides technical background information applicable to high burnup spent nuclear fuel (HBU SNF), provides an engineering assessment of recent NRC-sponsored mechanical testing of HBU SNF, and presents example approaches for licensing and certification of HBU SNF in transportation and dry storage.

ADDRESSES: Please refer to Docket ID NRC-2018-0066 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:*

Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301-287-9127; email: Jennifer.Borges@nrc.gov. Go to <https://www.regulations.gov> and search for Docket ID NRC-2018-0066. For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.

FOR FURTHER INFORMATION CONTACT: Ricardo Torres, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555 0001; telephone: 301-415-7508, email: Ricardo.Torres@nrc.gov.

SUPPLEMENTARY INFORMATION:**I. Discussion**

NUREG-2224, “Dry Storage and Transportation of High Burnup Spent Nuclear Fuel” (ADAMS Accession No. ML20191A321), is a technical basis document which expands on the aspects that pertain to hydride reorientation in HBU SNF cladding, as discussed in SFST-ISG-11, Revision 3, “Cladding Considerations for the Transportation and Storage of Spent Fuel” (ADAMS Accession No. ML033230335), NUREG-2215, “Standard Review Plan for Spent Fuel Dry Storage Systems and Facilities—Final Report” (ADAMS Accession No. ML20121A190), and NUREG-2216, “Standard Review Plan for Transportation Packages for Spent Fuel and Radioactive Material: Final Report” (ADAMS Accession No. ML20234A651). Hydride reorientation is a process in which the orientation of hydrides precipitated in HBU SNF cladding during reactor operation changes from the circumferential-axial to the radial-axial direction. NUREG-2224 provides an engineering assessment of the results of NRC-sponsored research (NUREG/CR-7198, Rev. 1, “Mechanical Fatigue Testing of High-Burnup Fuel for Transportation Application” ADAMS Accession No. ML17292B057) on the mechanical performance of HBU SNF following hydride reorientation. Per the conclusions of that assessment, NUREG-2224 presents example approaches for licensing and certification of HBU SNF for transportation (under part 71 of title 10 of the *Code of Federal Regulations* (10 CFR), “Packaging and Transportation of Radioactive Material”) and dry storage (under 10 CFR part 72, “Licensing Requirements for the Independent Storage of Spent Nuclear Fuel and High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste”).

II. Additional Information

On August 9, 2018 (83 FR 39475), the NRC solicited comments on draft NUREG-2224, “Dry Storage and Transportation of High Burnup Spent Nuclear Fuel.” The initial public comment period closed on September 24, 2018. Responding to several requests from the public, the NRC reopened the public comment period on October 10, 2018 (83 FR 50965), to allow more time for members of the public to develop and submit their comments. The staff considered public comments received on the draft document in preparing the final NUREG-2224. A summary of the public comments and staff responses are available in ADAMS under Accession No. ML20120A444.

III. Regulatory Analysis

The NRC prepared a regulatory analysis on this action. The analysis examines the costs and benefits of the alternatives considered by the NRC. The regulatory analysis is available at ADAMS Accession No. ML20188A027.

IV. Backfitting, Forward Fitting, and Issue Finality Provisions

This NUREG (NUREG-2224) sets forth the NRC's position regarding acceptable approaches for demonstrating regulatory compliance in applications for dry storage cask Certificates of Compliance (CoCs), CoCs for transportation packages, and specific licenses for Independent Spent Fuel Storage Installations (ISFSIs) involving HBU SNF. The issuance of this NUREG would not constitute backfitting as defined in the backfitting provisions in 10 CFR 72.62 and would not implicate forward fitting as described in Management Directive (MD) 8.4, “Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,” for specific ISFSI licensees. Dry storage cask CoCs do not fall within the backfitting provision in 10 CFR 72.62, and there are no backfitting provisions in 10 CFR part 71 regarding CoCs for transportation packages. Issuance of the NUREG would also not constitute backfitting or forward fitting under 10 CFR 50.109 or MD 8.4, or otherwise be inconsistent with issue finality provisions in 10 CFR part 52, that are applicable to general ISFSI licensees. The NRC's position is based upon the following considerations.

1. The NUREG does not constitute backfitting or forward fitting or affect issue finality. The NUREG provides licensing and certification approaches acceptable to the NRC staff for demonstrating regulatory compliance in applications for dry storage cask CoCs, CoCs for transportation packages, and specific ISFSI licenses involving HBU SNF. Changes in staff guidance, without further NRC action, are not matters that meet the definition of backfitting or forward fitting or affect the issue finality of a 10 CFR part 52 approval.

2. Current or future applicants who may use this guidance in developing acceptable approaches for demonstrating regulatory compliance in applications for dry storage cask CoCs, CoCs for transportation packages, and specific ISFSI licenses involving HBU SNF in the future are not—with limited exceptions not applicable here—within

the scope of the backfitting and issue finality regulations. Applicants are not, with certain exceptions, covered by either the Backfit Rule or any issue finality provisions under 10 CFR part 52. This is because neither the Backfit Rule nor the issue finality provisions under 10 CFR part 52—with certain exclusions not applicable here—were intended to apply to every NRC action which substantially changes the expectations of current and future applicants. If, in the future, the staff seeks to impose a position in the NUREG in a manner that constitutes backfitting or does not provide issue finality as described in the applicable issue finality provision, then the staff would need to address the Backfit Rule or the criteria for avoiding issue finality as described in the applicable issue finality provision.

3. The staff does not, at this time, intend to impose the positions represented in the NUREG in a manner that would constitute forward fitting. If, in the future, the staff seeks to impose a position in the NUREG in a manner that constitutes forward fitting, then the staff would need to address the forward fitting criteria in MD 8.4.

V. Congressional Review Act

This NUREG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated: November 25, 2020.

For the Nuclear Regulatory Commission.

Christopher M. Regan,

Deputy Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

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NUCLEAR REGULATORY COMMISSION

[Docket No. 70–7005; NRC–2020–0209]

Waste Control Specialists LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) in support of the NRC's consideration of a request from Waste Control Specialists LLC (WCS) to continue to store

transuranic waste that originated from the Los Alamos National Laboratory (LANL) without an NRC license under the terms of a 2014 order. The 2014 order exempted WCS from the NRC's regulations concerning special nuclear material (SNM). The current action is in response to a request by WCS dated August 24, 2020, to extend the possession time to temporarily store certain waste at specific locations at the WCS Site until December 23, 2022.

DATES: The EA and FONSI referenced in this document are available on December 1, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0209 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2020–0209. Address questions about Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *The NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select “Begin Web-based ADAMS Search.” For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *Attention:* The PDR, where you may examine and order copies of public documents is currently closed. You may submit your request to the PDR via email at PDR.Resource@nrc.gov or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Harry Felsher, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6559; email: Harry.Felsher@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Waste Control Specialists LLC operates a facility in Andrews County, Texas (the WCS Site), that is licensed to process and store certain types of radioactive material contained in low-level waste (LLW) and mixed waste. The WCS Site is also licensed to dispose of radioactive, hazardous, and toxic waste. Under an Agreement authorized by the Atomic Energy Act of 1954, as amended, a State can assume regulatory authority over radioactive material. In 1963, Texas entered into such an Agreement and assumed regulatory authority over source material, byproduct material, and SNM under critical mass. The WCS Site is licensed by the Texas Commission on Environmental Quality (TCEQ) for possession, treatment, and storage of radioactive waste and disposal of LLW under Radioactive Materials License (RML) R04100.

Section 70.3 of title 10 of the *Code of Federal Regulations* (10 CFR) requires persons who own, acquire, deliver, receive, possess, use, or transfer SNM to obtain a license pursuant to the requirements of 10 CFR part 70. The licensing requirements in 10 CFR part 70 apply to persons in Agreement States possessing greater than critical mass quantities, as defined in 10 CFR 150.11. However, pursuant to 10 CFR 70.17(a), “the Commission may grant such exemptions from the requirements of the regulations in this part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.”

On September 25, 2000, WCS first requested an exemption from the licensing requirements in 10 CFR part 70 (ADAMS Accession No. ML003759584). On November 21, 2001, the NRC issued an order to WCS (2001 Order) granting an exemption to WCS from certain NRC regulations and permitted WCS, under specified conditions, to possess waste containing SNM in greater quantities than specified in 10 CFR part 150, at the WCS storage and treatment facility on the WCS Site in Andrews County, Texas, without obtaining an NRC license pursuant to 10 CFR part 70. The 2001 Order was published in the **Federal Register** on November 15, 2001 (66 FR 57489). The NRC issued superseding Orders to WCS in 2004 (*i.e.*, modified list of reagents) and 2009 (*i.e.*, modified sampling requirements) that modified the conditions in the 2001 Order.

On February 14, 2014, a radiation release event occurred at the U.S. Department of Energy (DOE) Waste Isolation Pilot Plant (WIPP) Facility