

11. Would there be special concerns about waste from facility decommissioning? Would such concerns depend on the type of facility being decommissioned? Are there credible projections of the volumes and types of waste expected to be generated when decommissioning large numbers of nuclear reactors? (III.D)

IV. What Non-Regulatory Approaches Might Be Effective in Managing LAMW and Other Low-Activity Radioactive Wastes?

Many of the wastes just described appear to share similar physical and radiological characteristics. This might imply that a common approach, or a limited number of approaches, could effectively manage and dispose of such wastes. Such an approach could eliminate the need for separate actions addressing individual waste streams. The real question is to decide which approach (or approaches) may be most promising in terms of practicality, legal applicability, cost-effectiveness, and risk reduction potential. In order to develop meaningful approaches, it is necessary to obtain the advice of potentially affected stakeholders. We therefore welcome comment on some of the possible approaches to managing and disposing of these other categories of low-activity waste. We also welcome advice on new or innovative approaches that are not described below.

A. General Discussion

Our conceptual approach to disposal of low-activity mixed waste relies on regulatory actions by us and by NRC, although the envisioned regulatory action would be permissive (that is, it would allow actions not possible under the existing regulatory structure) and LAMW generators or disposal facilities could choose not to take advantage of the increased disposal flexibility. By contrast, as discussed above, some other low-activity wastes might not be as clearly addressed by us through regulatory action. However, we believe it is in the public's interest to address the issues presented by disposal of these other low-activity wastes. Therefore, we are considering how best to accomplish this through actions that do not involve rulemakings or other regulatory methods. These non-regulatory approaches may also be effective to some extent in addressing issues related to LAMW disposal.

1. Advantages and Disadvantages of Non-Regulatory Approaches

A prime complaint about regulatory programs is that they are too prescriptive and limit the flexibility of

the regulated parties in meeting goals. This can be true, and to some extent they also limit the flexibility of regulatory agencies in improving the effectiveness of the program, because modifying a regulatory program takes significant time and resources. In addition, enforcement actions, while necessary to maintain the integrity of the program, by their very nature often result in adversarial relationships with limited trust. In short, the burden of regulatory programs to all parties can sometimes outweigh the positive benefits.

In a non-regulatory program, the regulatory agency and regulated community typically work more closely together to achieve a common goal. In many cases, the regulated parties participate in designing the program. Non-regulatory programs are usually less prescriptive, offering flexibility to participants to meet goals in the way they find most effective. In turn, the regulatory agency focuses less on strict compliance and more on technical assistance, training, guidance, and encouraging use of innovative technologies. The flexibility of such programs can make them easier to modify as found necessary. Compliance with regulatory requirements is still necessary, and some programs offer flexibility only to "superior" performers. Some programs encourage self-reporting by offering reduced penalties.

The main concern about non-regulatory approaches is that they can result in a lessening of regulatory oversight. When a regulatory agency reduces its emphasis on inspections and enforcement, allows "innovative" methods, and relies on self-reporting, there is always the potential for serious non-compliance with requirements and subsequent environmental damage. For example, offering reduced penalties for reporting findings of "self-audits" has been criticized as encouraging abuses.

2. Examples of Existing EPA Non-Regulatory Programs

EPA has developed a number of programs targeted to improve environmental performance. "Partners for the Environment" is the collective name for voluntary programs developed by EPA Headquarters or regional offices. These programs primarily involve agreements between EPA and individual regulated entities, and focus on taking performance to a level beyond simple compliance with regulatory requirements (or, in some cases, innovative approaches may be developed that provide some flexibility in the strict regulatory framework to

achieve overall goals). In that sense, it may be difficult to apply non-regulatory approaches where there are competing requirements (as for mixed waste) or inconsistent requirements (as for individual States and TENORM). We offer this discussion not to endorse any specific program as especially suited to address low-activity radioactive wastes, but to encourage thought and comment about innovative approaches that might be developed, and to provide examples of the types of efforts EPA has traditionally embraced. Individual EPA programs include:

- Project XL (eXcellence and Leadership)—Project XL is a national pilot program that allows State and local governments, businesses and Federal facilities to develop with EPA innovative strategies to test better or more cost-effective ways of achieving environmental and public health protection. In exchange, EPA will issue regulatory, program, policy, or procedural flexibilities to conduct the experiment. Project XL uses eight criteria to assess potential projects, including producing superior environmental results, cost savings, or regulatory flexibility; demonstrating innovative processes; pollution prevention; and ability to transfer lessons or data to other facilities. "Project XL for Communities" also looks for strategies that provide economic opportunity and incorporate community planning. Project XL has approved projects related to mixed waste treatment.

- National Environmental Performance Track—The National Environmental Performance Track program is a voluntary partnership program that recognizes and rewards businesses and public facilities that demonstrate strong environmental performance beyond current requirements. It encourages continuous environmental improvement through the use of environmental management systems, local community involvement, and measurable results. Incentives to participants include public recognition, low priority for routine inspections, partnerships with State agencies, and regulatory changes to streamline requirements. There are nearly 300 participants in the program.

- Code of Environmental Management Principles (CEMP)—CEMP was developed in response to Executive Order 12856 ("Federal Compliance with Right-to-Know Laws and Pollution Prevention," August 3, 1993), which called for EPA to develop an environmental challenge program for Federal agencies. CEMP incorporates elements of state-of-the-art