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LOW LEVEL WASTE DISPOSAL -- SHARED PROBLEMS
AND SHARED RESPONSIBILITY

PRESENTED BY

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LOW LEVEL RADIOACTIVE WASTE MANAGEMENT
CONFERENCE

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Good morning ladies and gentlemen. I am pleased to have this opportunity to talk with you at this pivotal time in the Nation's low-level waste disposal program.

Currently, there are some indications of progress toward siting new, greatly-needed low level waste disposal facilities. At the same time, the strong incentives that were built into the Low Level Radioactive Waste Policy Act of 1980 and the Low Level Radioactive Waste Policy Amendments Act of 1985 are about to go into effect. It may be fair to say that events in the near future will determine the success or failure of the public policy established by those acts. I believe that we need not fail and we must not fail to make that policy a success.

Today, I will discuss what I believe are shared problems and a shared responsibility in disposing of low level radioactive waste, the NRC's role and responsibility, and some recent NRC efforts to carry out its responsibility. Finally, I will leave you with some thoughts about success in the face of the controversy that surrounds many of our efforts.

Shared Problems

Over the years, the use of radioactive materials has become

quite common in our lives. They are used by hospitals, research institutions, industry, government, and universities. They contribute to health care and scientific research as well as the production of a variety of consumer goods, commercial chemicals and electric power.

Of all the wastes that result from these uses, low-level radioactive wastes constitute less than 1/1000 percent. However, the mere existence of radioactive wastes has become so controversial that it is now difficult to process, store, transport, or dispose of them. If these wastes cannot be satisfactorily managed, then eventually all the activities that produce them must stop. But knowingly or not, we have all come to depend on the beneficial uses of radioactive materials and we all stand to lose if the problems of addressing the controversies and managing the wastes are not solved. We share these problems.

Shared Responsibility

As important as these problems are, when we look at the existing legal framework for solving them, we find that the law gives no one person or institution sole authority or responsibility for radioactive waste disposal. Neither the Low Level Radioactive Waste Policy Act nor the Low Level Radioactive Waste Policy Amendments Act create a Low Level Waste Czar -- both authority and responsibility are to be shared.

In fact, under these Acts the States are responsible for disposal, the NRC is responsible for licensing both disposal facilities and some packaging for transportation, the U.S. Department of Transportation regulates all other aspects of transportation, the U.S. Department of Energy provides technical assistance and information to the States about various aspects of low level waste management, shipping, and disposal, and the U.S. Environmental Protection Agency is authorized to establish generally applicable environmental standards for disposal.

No -- there is certainly no Low Level Waste Czar. Moreover, I believe that was a wise choice. Given the controversies we must face, responsibility and authority must be shared. That is not to say that shared responsibility and authority make the job easy. Clearly, they do not -- in this instance, they only make it possible. To resolve our shared problems successfully, we must each try to fulfill our responsibility in a cooperative way. That is, we must recognize that even though our principal interests may differ there is a sufficiently broad overlap of common interests so that if we sincerely seek it, we can usually find an accommodation that permits everyone to gain.

The NRC's Role and Responsibility

The NRC's role is to assure that disposal of low level radioactive wastes is accomplished in a manner that adequately

protects public health and safety and the environment. As a Federal Agency, the NRC has an obligation to assure that the public policy established in the Low Level Radioactive Waste Policy Act and the Low Level Radioactive Waste Policy Amendments Act is carried out.

We strive to carry out our mandated responsibility in an open and timely way. We try to anticipate potential safety problems and regulate to prevent their occurrence instead of being forced to deal with them in a reactive way. Also, to the extent that we can, we try to avoid head-on confrontations. We try to find ways to work with other parties so that all parties gain.

I will now take a few minutes to focus on a few of the NRC's recent efforts that I found interesting and that I believe exemplify this approach.

Compatibility of Low Level Waste Regulations

Under the Atomic Energy Act, States are able to assume authority for licensing and regulating byproduct materials, mill tailings, source material, and small quantities of special nuclear material. States that choose to do so are called "Agreement States" because an agreement between the Governor of the State and the Commission allows the State to assume this authority. Agreement States have the dual responsibilities of developing and licensing low level waste facilities. However, their low level waste regulations must be compatible with the NRC's 10 CFR Part 61.

In finding publicly acceptable solutions to the complex problems of developing disposal facilities and assuring their safety, Agreement States need flexibility to be able to address local conditions and concerns. In fact, some Agreement States have sought to establish requirements limiting radiation or effluent levels below the levels that are permissible under Federal radiation protection standards.

The NRC has a strong interest in seeing the low level waste program move forward, and from a national perspective, in the kinds of requirements Agreement States wish to impose on low level waste disposal. I also believe that the NRC has a strong interest in supporting uniform radiation protection standards. It would seem logical that a radiation standard that provides adequate protection for the citizens of one State should also provide adequate protection for the citizens of any other State in the nation as well.

The radiation standards in the NRC's regulations have been carefully developed to require what is necessary to protect

public health and safety; they are based on the best technical knowledge and thought available. In my opinion, if the NRC had a sound basis to believe that a more stringent standard was needed, it would be obligated to amend its regulations; similarly, if for sound reasons, a State believed that the NRC's regulations do not afford adequate protection, the right course of action for them would be to petition the NRC for appropriate public rulemaking to correct this deficiency.

This need for both soundly based standards that must be respected, and flexibility to address local situations and concerns has been a difficult situation for the Commission to resolve. In addressing this problem, the Commission has agreed upon several firm points of reference. First, a majority of the Commission considers that the NRC's radiation protection standards must be adopted in Agreement State regulations for low level radioactive waste disposal. Second, a majority of the Commission believes that Agreement States should be allowed the flexibility to establish ALARA goals, design objectives and the like at whatever level they may deem appropriate as long as the level of protection is not less than that provided by 10 CFR Part 61 and as long as these goals or objectives are not construed to be radiation protection standards.

Recent Rulemakings

Two recent rulemaking efforts illustrate the NRC's interest in facilitating the low level waste disposal program consistent with its safety responsibilities. I would like to tell you about these now.

The first involved amending the definition of the term "land disposal facility" in 10 CFR Part 61. The original definition appeared to rule out some disposal concepts such as above-ground vaults. This was not the Commission's intent. The Commission's intent was that any disposal facilities that can meet the Performance Objectives of Part 61 are acceptable. Because some states may wish to use one of these possibly unacceptable concepts, the NRC recently completed a rulemaking to clarify its intent by changing the definition. The final rule was issued in June, 1993 and became effective in July.

The second of these rulemakings involved criteria for on-site storage after January 1, 1996. It now appears that on-site storage by most licensees is a certainty for the foreseeable future. Few, if any, new sites will be open by January 1, 1996. Under the Low Level Radioactive Waste Policy Amendments Act, if a State or Compact could not provide for proper disposal by January 1, 1996, the State was required to take title to low level waste when given proper notice by the generator or owner. This established a strong incentive for States and Compacts to

develop disposal facilities. However, this federal requirement for State action was ruled unconstitutional by the Supreme Court.

The possibility of long-term, on-site storage of low level wastes by NRC licensees is not a desirable situation from NRC's standpoint. Such storage is not an immediate public health and safety problem. Low Level Waste can be safely stored if given proper attention, but the Commission believes that disposal in facilities that satisfy 10 CFR Part 61 is a safer option than long-term storage at hundreds or even thousands of sites around the country which could be very difficult to monitor. Therefore, the Commission views the potential for long-term, on-site storage as a health and safety issue. I believe, too, that the longer the low level waste is stored on-site, the less the incentive for all parties to face the difficult public policy issues involved in developing proper disposal facilities.

The NRC approach in regulating is to anticipate health and safety problems and address them before they start. Accordingly, NRC issued a proposed rule in February, 1993 which would make on-site storage of most low level waste a last resort for licensees. The NRC staff is analyzing the comments on the proposed rule that were received. Robert Nelson of NRC's Division of Low Level Waste Management and Decommissioning will elaborate on the status of this rulemaking in a paper to be presented at this conference. However, before I leave this subject, I would like to correct a misunderstanding I have encountered. The proposed regulation would not prohibit on-site storage after January 1, 1996. Instead, it would require licensees to document that they have exhausted other reasonable waste management options as a prior condition for such storage.

Enhanced Participatory Rulemaking Process

In July 1990, the Commission issued its Below Regulatory Concern (BRC) Policy statement. It was quickly caught in a swirl of controversy that exceeded any NRC expectations. As a result, the Commission put a moratorium on BRC implementation in the summer of 1991 and started a consensus-building process to identify and address the issues. When after several months of intense effort on NRC's part the environmental community declined to join, NRC terminated the process for lack of viability. However, there were valuable lessons learned from this experience -- most notably the need to recognize and involve a full range of interests before potentially controversial public policy positions are taken.

With this thought in mind, the Commission decided to pursue a rulemaking in a way that provided for comprehensive and early input on the views of all interested parties. Radiological criteria for decommissioning, an important and potentially

controversial topic, was chosen as the subject. In 1992, NRC began to plan an open, participatory process for this rulemaking. A workshop format was selected because it was thought to offer the participants an opportunity to discuss issues with one another and to question one another about their respective positions and concerns. EPA became a full participant in planning and implementation of this process.

The NRC staff identified eight general interests to be represented. These included State, Local, and Tribal governments, federal agencies, citizens groups, nuclear utilities, fuel cycle facilities and non-fuel cycle facilities. The staff also proposed to invite contractors with experience in decommissioning, and professional society representatives so that they might contribute to the factual and technical base for the workshop discussions. To assure that a full range of interests would be represented, NRC agreed to pay some travel costs for invitees who could not otherwise attend.

The participants were invited to a series of six U. S. regional and one national two-day workshops. About twenty participants were invited to each, and each was facilitated by professionals from The Keystone Center, a neutral organization. The NRC staff distributed an issues paper to the participants well in advance of the workshops. This paper helped to focus the discussions. A transcript was kept of each workshop and members of the general public were welcome to attend and had an opportunity to comment. In addition, written comments were solicited from both the participants and members of the public.

The NRC has already adopted some of the suggestions made by the workshop participants to further open the process for this rulemaking. The staff set up an electronic bulletin board to allow the participants and others to continue the dialogue that started at the workshops. Also, the NRC held additional scoping meetings for the Generic Environmental Impact Statement at locations outside of the Washington D.C. area.

The rulemaking itself is also progressing. The staff's consideration of workshop comments and development of the draft radiological criteria for decommissioning are nearing completion. They will be made available to the workshop participants and members of the public for early reaction at the same time that they are provided to the Agreement States for review. We plan to issue a proposed rule in May, 1994 and a final rule in May, 1995.

On a personal note, I attended the regional workshop that was held in King of Prussia, Pennsylvania last April. I thought that the contributions by attendees were constructive and found them stimulating and informative. I left with a number of fresh

ideas and my belief in the value of consensus building processes reconfirmed.

The Evolving Importance of Consensus Building Processes

The disposal of low level radioactive waste, while very clearly a shared responsibility, is still not very different from other complex public policy issues which involve competing and often disparate interests.

I am beginning to note more and more use of a consensus development approach to dealing with such issues from contested Rate of Return decisions by Public Utility Commissioners to the siting of controversial housing projects. The building resistance by States and communities to unfunded federal mandates that require States, cities, counties and towns to expend substantial sums (that must come from funds diverted from important local needs such as education), is an example of where early consensus building perhaps could have helped to avoid the crises in credibility that the Federal Government now suffers. In recent testimony before the U.S. Senate Committee on Governmental Affairs, one local official said, "We will have the cleanest water in the country and the dumbest kids."

The general approach to developing consensus positions in which everyone gains has become well identified through the work of a number of organizations such as the MIT-Harvard Public Disputes Program. The basic principles are ones which common sense and standing traditions have long recognized, such as acting in a trustworthy manner at all times, acting responsibly and admitting mistakes, acknowledging the concerns of others, working towards satisfactory long-term relationships and working from an unbiased factual basis. Often, there has to be a willingness to share power, while still discharging responsibility (not simple to achieve by organizations with statutory obligations that must be fulfilled). Nevertheless, if at an early stage these guiding principles are followed, I believe that superior solutions to problems can be found that offer mutual gains to all concerned over those solutions which come from the classical "winner takes all" approach. I believe the consensus building approach is particularly useful for solving problems with divided responsibility for their resolution. The Commission's participatory rulemaking on decommissioning requirements was prompted by these considerations. I urge you to follow the outcomes of that process and to note the lessons that we all learn from it. They may well provide useful guidance to dealing with low level waste disposal issues.

In conclusion, I wish you every success for an informative

and productive meeting.