



CHAIRMAN

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

May 9, 1996

Mr. David H. Leroy
P.O. Box 193
Boise, Idaho 83701

Dear Mr. Leroy:

I am responding to your letter of February 13, 1996, in which you commented on the NRC staff's letter to the Department of Energy (DOE), dated January 6, 1996. In its letter, the staff stated its position with respect to the assured storage concept for long-term management of low-level radioactive waste (LLW).

The Commission's policy has been, and continues to be, that LLW should be safely disposed of as soon as possible after it is generated. Thus, the Commission strongly supports State and compact efforts to develop new LLW disposal capacity and agrees with the staff that a number of States and compacts have made tangible progress in developing these facilities under the Low-Level Radioactive Waste Policy Amendments Act of 1985. We would be concerned about any changes to the regulatory framework that might divert attention and resources from the timely development of new disposal facilities.

At the same time, the Commission is also aware that some States and compacts are having difficulty developing new disposal facilities. We understand that a few States have expressed interest in the assured storage concept. Should any State come to the Commission directly for assistance regarding the feasibility of assured storage in their State, we would evaluate their request or proposal in accordance with our regulatory responsibilities.

Since assured storage is a new concept, consideration needs to be given to NRC's established review procedures, and, in particular, whether they should be supplemented to ensure protection of the public health and safety and the environment in the event of a license application for this type of facility. In doing so, several complex issues would need to be addressed. For example, NRC would need to determine at what point indefinite storage constitutes disposal. Accordingly, it is not clear whether consideration of a license application would occur under 10 CFR Part 30, 10 CFR Part 61, or perhaps under a new section developed in response to a petition for rulemaking. In this regard, we would call your attention to 10 CFR Part 2.802, "Petition for Rulemaking". This issue, and the overall approach to licensing such a facility, are important licensing matters that would require a thorough review by the staff and the Commission.

ATTACHMENT 1

The staff also raised an issue about the need to ensure adequate financial assurance for the ultimate disposition of the waste. It is not clear that the financial assurance requirements for an assured storage facility would be the same as existing requirements for disposal facilities or for short-term storage of waste incident to operations. This issue would also be addressed in the review. In addition, the staff made a point related to the storage of special nuclear material (SNM) and the additional licensing actions that such storage may involve. If SNM is to be included in the inventory of stored LLW, then licensing under 10 CFR Part 70, or equivalent Agreement State regulations, would be required. In addition, if the SNM inventory were to exceed the limits in 10 CFR 150.11, an NRC license would generally be required even if the facility were to be located in an Agreement State.

The Commission appreciates your interest in the safe and effective management of LLW.

Sincerely,


Shirley Ann Jackson