

Kennedy

LLW Forum

News Flash

7:00 P.M. EST March 26, 1998

by facsimile transmission to Forum Participants/Alternates, Federal Liaisons/Alternates

DOE Seeks Comment on Policy Analysis re Use of Commercial Disposal Options

On Thursday, March 19, 1998, the U.S. Department of Energy issued a notice in the *Federal Register* of the department's intent to conduct an analysis of its policy regarding the disposal of low-level and mixed radioactive waste at commercial facilities (63 *Federal Register* 13,396). As part of this analysis, DOE is soliciting comments from the public and interested organizations on whether the department should (1) continue to use existing, licensed commercial disposal facilities; (2) pursue recent proposals by two private entities offering disposal options at existing hazardous waste disposal sites; or (3) in other respects change its policies or practices relating to the use of commercial facilities for the disposal of DOE waste. Comments on the policy analysis are due by May 18, 1998.

Copies of the Federal Register notice itself may be obtained from the Federal Register on line via GPO Access at wais.access.gpo.gov.

Recent Proposals

The notice indicates that DOE has received proposals from Waste Control Specialists, LLC of Texas (WCS) and Laidlaw Environmental Services, Inc., of Colorado. The WCS proposal, as characterized in the *Federal Register* notice, calls for DOE "to regulate a commercial waste disposal facility through a disposal contract with the

facility owner." The Laidlaw proposal, as the notice explains "would have DOE pay for some or all of a commercial facility's maintenance before any ... [low-level or mixed radioactive waste] is accepted, and would have DOE pay for the costs associated with obtaining licenses and appropriate regulatory approvals for the facility from the state in which the facility is located."

The notice specifically states that neither of the identified proposals involves the establishment of a disposal facility pursuant to the Low-Level Radioactive Waste Policy Act. It does, however, assert that "[t]he Department is interested in encouraging competition for ... [the disposal of its waste at commercial facilities]."

Inquiries and the Submission of Comments

The notice invites interested states, agencies, organizations, and the general public to comment on the WCS and Laidlaw proposals—as well as on the department's current policy and practices regarding the use of existing, licensed commercial disposal facilities and on potential changes thereto—directing communications to

Jay Rhoderick
United States Department of Energy, EM-35
19901 Germantown Road
Germantown, MD 20874-1290.

6/7

DOE Seeks Comment re Use of Commercial Disposal Options

Persons wishing to provide oral comments may call (800)635-4080. Persons needing additional information should either write to Rhoderick at the above-listed address, or call him at (301) 903-7174.

The notice specifically points out that “[i]f the Department’s policy analysis results in a proposal that would require the preparation of an environmental analysis pursuant to the National Environmental Policy Act, an appropriate analysis will be prepared.”

Background

DOE’s Policy on Use of Commercial Disposal Facilities Prior to 1979, DOE made regular use of commercial facilities for the disposal of its low-level and mixed radioactive waste. In 1979, DOE changed its policy, using commercial disposal facilities on a limited basis and instead relying primarily on its own facilities for the disposal of these wastes. In recent years, however, DOE’s use of commercial disposal facilities has increased, and in the future greater use of commercial disposal facilities may occur as DOE proceeds with the cleanup of its sites.

DOE’s current policy concerning the disposal of its low-level and mixed radioactive waste is contained in DOE Order 5820.2A, Radioactive Waste Management (September 26, 1988). This order provides that such waste “shall be disposed of on the site at which it is generated, if practical, or if on-site disposal capability is not available, at another DOE disposal facility.” The order requires the department to dispose of the waste at a DOE facility unless an exemption is granted for disposal at a commercial facility. DOE may approve exemptions from this policy for “[n]ew or alternate waste management practices that are based on appropriate documented safety, health protection, and economic analyses.” Exemptions can be granted only if the proposed commercial disposal facility complies with all applicable federal, state and local requirements, and possesses all of the necessary permits, licenses and approvals for disposal of the specific waste involved—including a license issued by the Nuclear

Regulatory Commission or by an Agreement State. Moreover, the state and compact in which the commercial facility is located must be consulted before approval of the exemption and must be notified prior to the shipment of any waste.

Disposal Access and Volumes According to the Federal Register notice, since the 1950s, DOE has disposed of approximately 3 million cubic meters of low-level radioactive waste from its weapons production activities in disposal facilities located at DOE sites and disposed of approximately 200,000 cubic meters of such waste at commercial disposal facilities. In addition, approximately 40,000 cubic meters of DOE mixed waste from its weapons production activities has been disposed of primarily at commercial facilities.

DOE’s cleanup activities have increased significantly since the late 1980s, resulting in the disposal of approximately 1.2 million cubic meters of low-level and mixed radioactive waste to date. Approximately 250,000 cubic meters of this was high-volume low-activity waste that has been disposed of at commercial facilities—with Envirocare of Utah receiving most of the waste.

DOE projects that future cleanup activities will generate approximately 31 million cubic meters of low-level and mixed radioactive waste. The department expects to dispose of the large majority of this waste at DOE facilities. However, DOE projects that approximately two million cubic meters of this waste may be eligible for disposal at commercial facilities under the department’s current policy.

Waste Control Specialists Waste Control Specialists—which owns and operates a hazardous waste disposal facility in Andrews County, Texas—has proposed to expand its business to include the disposal of DOE low-level and mixed radioactive waste. The State of Texas, pursuant to its authority as an Agreement State, has licensed WCS to store, process and treat low-level and mixed radioactive waste. (See *LLW Notes*, December 1997, pp. 16–17.) Texas cannot, however, license WCS to dispose of low-level radioac-

DOE Seeks Comment re Use of Commercial Disposal Options

tive waste because state law provides that a radioactive waste disposal license may be issued only to a "public entity" specifically authorized by law for radioactive waste disposal. To address these limitations, WCS submitted a proposal to DOE in late 1996 to dispose of DOE low-level and mixed radioactive waste without a state license. Under the WCS proposal, the facility would operate under contract with DOE, would be regulated by DOE pursuant to its authority under the Atomic Energy Act of 1954, and would accept radioactive wastes only from DOE. The WCS proposal suggested that DOE's regulatory role could be performed through a contract with an entity or group of entities with nuclear engineering and environmental expertise. At the end of the facility's operational phase, title would be transferred without cost to the federal government or to the State of Texas.

For additional information about the WCS proposal and litigation initiated by WCS against DOE as a result thereof, see *LLW Notes*, August/September 1997, pp. 15-17 and a *News Flash* published on March 23, 1998. The *Federal Register* notice affirms that "the Department's policy analysis could be affected by, and may have to await the resolution of, this litigation."

Laidlaw Environmental Services Laidlaw Environmental Services owns and operates an existing commercial hazardous waste disposal facility (Deer Trail) near Denver, Colorado. The Deer Trail Facility is not currently licensed to accept low-level and mixed radioactive waste for disposal. Laidlaw has proposed, however, to expand its services to include the disposal of DOE low-level and mixed radioactive waste—specifically from DOE's Rocky Flats Environmental Technology Site. Laidlaw's proposal is divided into two phases.

- Phase I would obligate the payment of federal funds to Laidlaw to maintain the facility in a condition ready to receive DOE waste and to reimburse Laidlaw for its expenses related to obtaining the necessary state licenses and permits to dispose of such wastes. (Colorado is an Agreement State, but does not have the same statutory licensing restrictions as the State of Texas.) Laidlaw would, in turn, be obligated to construct an appropriate disposal cell at its facility to receive such wastes and would commit to proceed with Phase II.
- Phase II would involve the actual shipment of DOE low-level radioactive and mixed waste to the Deer Trail Facility.

—Todd Lovinger

The Low-Level Radioactive Waste Forum is an association of state and compact representatives, appointed by governors and compact commissions, established to facilitate state and compact implementation of the Low-Level Radioactive Waste Policy Act of 1980 and the Low-Level Radioactive Waste Policy Amendments Act of 1985 and to promote the objectives of low-level radioactive waste regional compacts. The LLW Forum provides an opportunity for state and compact officials to share information with one another and to exchange views with officials of federal agencies and other interested parties.

LLW Forum News Flashes are produced by Afton Associates, Inc. for the LLW Forum under State of Washington Department of Ecology Contract Number C9700071 through a grant from the U.S. Department of Energy. Recipients may reproduce and distribute News Flashes as they see fit, so long as the News Flashes are reproduced in entirety with the preceding attribution.

To view recent LLW Forum News Flashes, visit the LLW Forum web site at www.afton.com/llwforum