



UNITED STATES  
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D. C. 20555-0001

January 6, 1996

Mr. Terry L. Plummer, Manager  
Low-Level Radioactive Waste  
Management Program  
Environmental Management  
U.S. Department of Energy  
Germantown, MD 20874-1290

Dear Mr. Plummer:

This is in response to your letter of November 3, 1995, in which you state the Department of Energy's (DOE) position on the "assured storage" concept. This concept was recently outlined in a trade magazine article written by DOE contractor staff. In your letter, you state that you continue to strongly support State and compact progress toward providing disposal of low-level radioactive waste (LLW) in accordance with Federal law, and that you continue to advocate disposal of LLW as preferable to long-term or indefinite storage from a public health and safety viewpoint. You also state that you will, in accordance with your responsibility to provide technical assistance to the States and compacts in LLW management and disposal, provide information on the "assured storage" concept.

We also strongly support State and compact efforts to develop disposal capacity in the U.S. States and compacts have made tangible progress in developing new disposal facilities under the Low-Level Radioactive Waste Policy Amendments Act of 1985. Several States have license applications under review by their regulatory agencies, and these reviews continue to progress. In California, a license was issued for the Ward Valley facility, and the project will be significantly closer to operation when the land for the facility is transferred from the Federal government to the State.

At the same time, we have several concerns with the "assured storage" concept that we ask you to consider in providing information on it to others. The first is the conclusion in the article that the permanent nature of disposal is the cause of public opposition to these facilities and the resulting slow progress in developing new disposal capacity. In the high-level radioactive waste program, siting of a monitored retrievable storage (MRS) facility has proven to be equally as difficult as the repository for permanent disposal, in part because of concerns that it could become a de facto disposal facility. Our experience is that siting and licensing of any nuclear waste facility such as these is difficult, and it is not clear that a storage facility would be any easier than a disposal facility. In fact, the U.S. General Accounting Office (GAO) published a report on May 5, 1995 (GAO/RCED-95-67), investigating alternatives to the current approach to managing low-level waste that might be more effective, including storage of LLW in lieu of disposal. The GAO stated (pages 60-61) that finding a storage site could be as difficult as finding a disposal site because of local opposition to any facility that would handle nuclear waste, whether it is for storage or disposal.

Although the GAO report makes no recommendations, it notes supporters of the current program believe that exploring other approaches could undermine the

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progress that many States have made and the long-standing support of most States for the current approach. It also notes that other approaches to managing waste appear to have drawbacks. We share the views of the GAO.

There are also significant issues that NRC would have to resolve in our licensing review for an assured storage facility to ensure that public health and safety were being adequately protected. For example, it appears that at some point an indefinite storage facility could present the question of whether it should be considered a disposal facility and licensed under disposal facility regulations, rather than the more general requirements in 10 CFR Part 30 for a storage facility. Assuming the issue was raised and depending on the circumstances involved, the Commission would have to consider this policy issue and decide when indefinite storage of waste constitutes *de facto* disposal. If the Commission or the operator of the assured storage facility decided at some time after the facility were in operation that the facility should be licensed for permanent disposal, there would be a risk that the facility could not meet the disposal facility regulations and waste would have to be disposed of elsewhere.

Second, for a facility licensed for storage, decommissioning financial assurance funds would need to be set aside to fund decommissioning of the storage facility, including costs associated with disposal of the facility's LLW. Further, if such a facility were licensed for storage, an issue may arise concerning its need for a separate Part 70 NRC license to possess special nuclear materials (SNM). Unlike disposal facilities, where SNM that is disposed of is not considered to be within the possession limits of the license, this is not so with storage and an NRC licensing review to address criticality issues may be needed.

We appreciate the opportunity to comment.

Sincerely,

*Margaret V. Federline*

Margaret V. Federline, Acting Director  
Division of Waste Management  
Office of Nuclear Material  
Safety and Safeguards

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Margaret V. Federline, Acting Director  
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