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March 17, 2003

Mr. Paul Goldberg
Rulemaking and Guidance Branch
Division of Industrial and Medical Nuclear Safety
Office of Nuclear Material Safety and Safeguards
Mail Stop T-9C24
Washington, DC 20555-0001

Dear Mr. Goldberg:

Enclosed is a comprehensive New York response to the Nuclear Regulatory Commission's January 31, 2003 Survey of Projected Need for Disposal or Storage of Low-Level Waste (LLW) and Projected Disposal Capacity (STP-03-011). This response compiles comments and data from the following New York State and City entities;

- New York State Energy Research and Development Authority
- New York State Department of Environmental Conservation
- New York State Department of Health
- New York State Department of Labor
- New York City Department of Health and Mental Hygiene

If you have any questions regarding our response, please feel free to contact me at (518) 862-1090 ext. 3274 or alp@nyserda.org.

Sincerely,

Alyse Peterson, P.E.
Project Manager

Enclosure

cc (w/encl): above listed agencies

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New York State response to NRC LLW Disposal and Storage Survey

Questions #1 and #4

New York State has no statutory program for developing or promoting establishment of an assured isolation facility (AIF). We are unaware of any mandate or authority for, or active consideration of, such an option in New York State. The New York State Department of Environmental Conservation (DEC) is the New York State lead LLRW regulatory agency and provides the following comments relative to regulation of such facilities;

If Federal or New York State agencies plan a number of related actions but decide to prepare impact statements on each action individually rather than prepare an impact statement on the entire group, this decision creates "segmentation" or "piece-mealing". If the agency considered all segments of a proposed action together, it would have considered the cumulative impacts of the action on the environment. Likewise, a decision on segmentation could result in a decision by the lead agency that the action was not a "major" action under NEPA/SEQR that requires the preparation of an environmental impact statement (EIS). The segments individually could be so limited in scope that they are not sufficiently major to come under the EIS preparation requirement. If a proposed action is challenged in court, the courts must decide whether that action on which an impact statement has been prepared, or a decision not to prepare an EIS, has been improperly segmented from other related actions.

In the case of an AIF, the agency proposing or approving the proposal addresses all impacts associated with bringing low level radioactive wastes (LLRW) to a site and storing those wastes over an indefinite period of time. However, the agency ignores the ultimate disposal of the LLRW that is stored at the AIF facility. As such, the concept of proposing an AIF facility without concurrently resolving the ultimate disposal of the wastes, clearly segments out the final disposition of the wastes from the storage part of the action.

While the concept of a very long-term LLRW storage facility may have many technical advantages, such as allowing for the decay-in-storage of tritium (12.3 year half-life) or cesium (30 year half-life), the ultimate disposal of the wastes and disposition of the AIF must be assessed under NEPA's/SEQR's mandates. Thus, if an AIF proposal actually proposed ultimate disposal and site disposition, it could meet those mandates. However, it would no longer be an AIF, but instead it would be a long-term storage facility with ultimate disposal and site disposition resolved. The whole purpose of considering an AIF appears to be to delay such decision making, thus failing to meet NEPA/SEQR mandates.

10 CFR Part 61 was adopted to regulate near surface disposal of LLRW. Subsequently, 6 NYCRR Parts 382-3 were adopted by DEC to meet 10 CFR Part 61 consistency, as New York is an Agreement State. In addition, Article 29 of the Environmental Conservation Law mandates DEC to include deep mine disposal as an alternative to those in Part 61. An AIF is neither of these facilities. DEC would have to issue many variances to Parts 382-3 in order for an AIF facility to be approved in New York - the more variances an agency issues, the more likely that the decision to issue them will be held improper under court challenge.

If NRC were to adopt Part 61 equivalent regulations for AIF facility licensing, they would need to address the NEPA problems, as discussed above, as part of their EIS adopting those AIF regulations.

Question #1 (second question #1)

New York State has not recently made projections of future waste generation. However, such data is provided to New York State annually by waste generators through New York State's LLRW reporting program. The attached Tables 1 & 2 provide the projections of waste generation volume and activity, respectively, for the years 2003 through 2006 as provided by waste generators in their 2001 annual reports. Historically, the generators' projections have not been particularly accurate, but have followed the general trend of actual disposal. Figure 1 provides a comparison of projected LLRW generation and actual disposal for the period 1988-2002, as reported by waste generators over that time period. Additionally, waste generation at federally managed cleanup sites in New York State is likely to be significant in the coming years. If NRC has not already done so, we suggest that NRC ask DOE, DOD (including ACOE) and EPA to provide projections of waste generation for such sites.

Question #2

Disposal capacity available to New York State for the various categories of waste is dependent upon continued access to licensed disposal facilities such as Barnwell, SC and the Envirocare facility in Utah. New York State access to the Barnwell facility is currently being phased out and will end in 2008. This will effectively eliminate New York State access to Class B and C waste disposal. However, the only significant generation of Class B & C waste in New York State is from nuclear power plants which have the capacity to store it onsite, if necessary.

Question #3

The only reasonably foreseeable option for storage, disposal or processing, not presently in use, that may be available to New York to reduce the quantities of LLRW without a designated disposition might be extended storage on site. This is particularly true of nuclear power plants, which have already established this capability and are seeking operating license extensions which would extend this capability through the next 20 to 30 years.

Table 1 - Estimated Generation of LLRW by Category (m^3)

	2003	2004	2005	2006
Class A	596.8	410.5	377.2	409.8
Class B	22.5	35.9	22.5	35.9
Class C	17.2	33.4	15.0	30.1
Total	636.5	479.8	414.7	475.8

Table 2 - Estimated Generation of LLRW by Category (GBq)

	2003	2004	2005	2006
Class A	427,721	409,256	427,702	409,281
Class B	107,715	114,339	107,715	115,339
Class C	2,200,922	707,418	917	2,208,417
Total	2,736,358	1,231,013	536,334	2,733,037

C-01

Low-Level Radioactive Waste Disposal (1988-2002)
Projected vs. Actual