

October 21, 2003

Paul Goldberg  
U. S. Nuclear Regulatory Commission  
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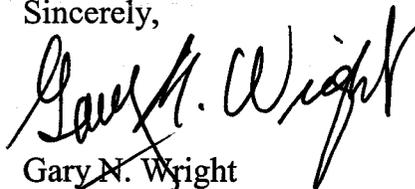
Re: Draft Rulemaking Plan for Assured Isolation Facilities (AIFs)  
(STP-03-070)

Dear Mr. Goldberg:

The State of Illinois, through the Illinois Emergency Management Agency, Division of Nuclear Safety, is pleased to provide the attached comments on the "Draft Rulemaking Plan for Assured Isolation Facilities (AIFs)". The Agency commends the NRC for the thorough analysis of the issues surrounding an AIF rulemaking. The Agency also concurs with the NRC's decision that an AIF rulemaking is not warranted at this time. Given the lack of interest in developing an AIF and the small probability that an AIF will be proposed or developed within the next decade, it makes sense to not spend the limited NRC resources in developing a rule that is not needed.

Attached are additional specific comments on the Draft Rulemaking Plan. Any questions pertaining to the comments may be directed to Michael Klebe at [klebe@iema.state.il.us](mailto:klebe@iema.state.il.us) or 217-785-9986.

Sincerely,



Gary N. Wright  
Assistant Director

Illinois Emergency Management Agency

Attachment

Comments from the Illinois Emergency Management Agency,  
Division of Nuclear Safety on the  
NRC's Draft Rulemaking Plan for Assured Isolation Facilities (AIFs)

Page 1, Paragraph 1, 2<sup>nd</sup> sentence – Since the passage of the Low-Level Radioactive Waste Policy Amendments Act of 1985, one new disposal facility (Envirocare of Utah's Clive, Utah facility) was developed, albeit not through a state or compact sponsored effort.

Page 1, Paragraph 3, last sentence – All previous discussions with NRC staff indicate that the NRC position on emergency access would not consider the failure of a state to provide for the disposal of waste generated within its border as an emergency requiring special access to an existing out-of-region disposal facility. Does this current statement indicate a change in NRC policy?

Page 7, Paragraph 1, last sentence – Wouldn't the EPA's conditional exemption for mixed waste storage and disposal apply to an AIF thereby eliminating the dual regulation?

Page 7, Waste Form – The waste classification and characteristics requirements of 10 CFR 61.56 were developed with the intent of providing robust waste forms and should be included in any proposed rule for an AIF. The institutional control requirements that would normally apply to the long-term custodian of the facility could logically be applied to the private company operating the AIF. The requirements for containers/packages should consider the long-term storage environment and the need for retrievability after a century. The requirements of 10 CFR Part 61 may not be adequate to ensure this.

Page 9, Issue 7, Length of operation/active maintenance and monitoring – The discussion regarding the life of the facility and the level of activity at the facility presented in this issue discussion is inconsistent with other issue discussions. Statements are made that indicated that level of maintenance and monitoring during the period wastes are received is greater than that during extended storage. Maintenance and monitoring would occur throughout the life of an AIF facility. The discussion presented here gives the reader a sense of partial abandonment after the facility ceases to receive waste and goes into a storage only mode. The thought that as the facility ages it will require less maintenance and monitoring is counter-intuitive. It would seem that the older the facility is and the longer that packages have to degrade and potentially release their contents, the more maintenance and monitoring the facility would need.

Page 10, Issue 9, Risk Management – The discussion as presented would only apply to a “storage only” AIF. For a “disposal option” AIF, the same long-term concerns addressed through Part 61 would need to apply, including the siting considerations. Once an AIF enters the disposal mode, it should have to meet all the disposal requirements presented in Part 61. The discussion should be modified to more clearly state this position. As it is written now it presents AIF as a storage facility without presenting the option for potential disposal. While this is stated in the discussion for Issue 10, it should be stated here as well.

Page 11, Issue 10, Reliance on Engineered Barriers – The Agency concurs with the discussion presented regarding the need for the AIF facility to comply with the siting criteria of Part 61 should it be converted to a disposal facility.

Page 12, Issue 11, Inclusion of single generators – Licensees storing their waste for an extended period of time should not be licensed using an AIF rulemaking. That seems to be overkill. Extended storage by a single generator should be licensed under existing regulations including the appropriate financial surety requirements. An AIF facility should only be considered to be a facility that receives waste from others, not a single generator storing their own waste.

Page 13, Issue 12, Role of Compacts – The role of compacts is not germane to the issue of an AIF rulemaking. Rules applicable to an AIF are not dependent on whether the facility is a regional facility developed by a host state or regional compact. Compact authority varies by region and is only limited by the congressionally approved authorizing legislation.

Page 13, Issue 13, Liability/Ownership – The Agency concurs with the discussion regarding liability and ownership. Unless the operator of the AIF is willing to take title to the waste in storage, the generator should remain financially liable for final waste disposal. Waste title has been an issue of concern as the Agency has studied interim storage. Absent a reliable cost estimate for final waste disposal, our conclusion is that no operator, private or public, would be willing to take title to waste placed in extended storage.

Page 19, Issue 19, Use of Part 61 Requirements – The use of Part 61 would be appropriate in providing the basis for waste class and stability requirements. However, the NRC may need to consider additional requirements on waste packaging to ensure container integrity for period the waste would be in extended storage. It would be unfortunate to try to remove waste from an AIF after a century of storage only to find that the package has degraded to the point that it would require an overpack or repackaging.