

May 25, 2004

Ms. Robin M. Nazzaro, Director
Natural Resources and Environment
United States General Accounting Office
441 G Street, NW
Washington, D.C. 20548

Dear Ms. Nazzaro:

Thank you for the opportunity to review and submit comments on the May 2004 draft of the General Accounting Office's (GAO) report entitled "Low-Level Radioactive Waste: Disposal Availability Adequate in Short Term, but Oversight Needed to Identify Any Future Shortfalls" (GAO-04-604). The U.S. Nuclear Regulatory Commission (NRC) appreciates the time and effort that you and your staff have taken to review this topic.

The GAO report provides an accurate summary of current low-level radioactive waste (LLRW) disposal activities and potential issues that may be encountered in the future. It also recommends that Congress consider directing NRC to gather information necessary to monitor the adequacy of LLRW disposal and the safety and security of stored waste, and to report to Congress if LLRW management conditions should change enough to warrant consideration of new legislation to ensure safe, reliable, cost-effective disposal availability. We fully support the goal of having a safe, reliable, and cost-effective system for the disposal of LLRW in the U.S. It is also our view that other actions in place of those GAO is recommending would be more effective in moving towards this goal, as we discuss below and in our more detailed enclosed comments.

The current report is a sequel to GAO's 1999 report, "Low-Level Radioactive Wastes: States Are Not Developing Disposal Facilities" (GAO/RCED-99-238). That report concluded that none of the States' or compacts' efforts to develop new disposal capacity had been successful and the State efforts to do so had "essentially stopped." This earlier report also examined alternatives to the current system for development of new disposal capacity in the U.S., but did not recommend any of them. Appendix II of the current report updates those alternatives. We believe that it is now time for GAO to explore these alternatives further because the future availability of disposal capacity and the costs of disposal under the current system remain highly uncertain and LLRW generators need predictability and stability in the national disposal system. We acknowledge that the potential approval for Envirocare to accept Class B and Class C wastes and licensing of a LLRW waste disposal facility in Texas could significantly improve the current LLRW disposal system in the U.S. At the same time, the nearly 20 years of experience under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) has demonstrated the difficulties in siting and licensing a LLRW facility. Not one new facility has been developed in this time under the LLRWPA. Therefore, we believe it is in the national interest to begin exploring the alternatives identified in Appendix II that would potentially provide a better legal and policy framework for new disposal options for commercial generators of LLRW.

We also believe that the specific recommendations in your current report for NRC to monitor LLRW disposal adequacy, safety, and security of stored wastes, and to report to Congress when new legislation needs to be considered, will not be effective or efficient. Most of the data to be collected are not related to, or needed for, carrying out our mission to protect public health and safety and promote the common defense and security. We believe that such monitoring and reporting, if necessary, would fall within the responsibility of the Department of Energy (DOE), as was previously recognized by Congress in LLRWPA. Also, until 2000, much of this data was required to be collected by DOE per the LLRWPA of 1985 because such data collection was inconsistent with NRC's health and safety mission.

The regulatory costs associated with complying with this recommendation are not balanced by the negligible benefits. Although we have not fully considered all of the types of data that would need to be collected, it would include such information as DOE's plans for disposal at commercial sites, cost information for disposal and processing, future waste generation rates for NRC and Agreement State licensees, the status of court decisions affecting LLRW disposal, and specific details of plans for disposal facilities in the U.S. (such as the proposed Texas facility). The recommendation would also have NRC and Agreement States collect information on the security and safety of stored waste. The 33 NRC Agreement States license most of the uses of radioactive materials in the U.S., and any safety and security data collection requirements would have to be implemented by them, as well as NRC. This could involve rulemaking within each of the Agreement States. An NRC rulemaking would require Office of Management and Budget clearances for requiring this information to be submitted, presumably annually. For NRC to request that Agreement States obtain this information and carry out similar monitoring would likely result in Agreement State requests for NRC funding. Without such funding, the Agreement States would likely view such a workload as an unfunded mandate.

NRC is already taking other actions, described in our detailed comments in the enclosure, to identify radioactive materials of concern, including LLRW, and to enhance their safety and security. It is our view that the actions we are currently implementing will adequately ensure safety and security of radioactive materials, including stored LLRW.

The report notes that NRC is in the process of conducting vulnerability studies, but fails to mention other actions NRC has taken to manage and minimize these risks. The comprehensive vulnerability assessments involve all licensees in the industrial and medical areas, including those with LLRW storage and disposal. The results of these assessments will include recommendations for graded approaches to security enhancements based on overall risk of particular facilities. The risks from LLRW storage will be appropriately factored into the NRC staff recommendations.

Further, we do not agree that LLRW is an attractive target for adversaries. Much of this material is dispersed radioactive material within other non-radioactive waste materials and, in this form, requires procurement of large volumes of material to obtain significant quantities of radioisotopes of greatest security concern. We do consider that spent sealed sources (discrete radioactive sources), which are collected by licensed waste brokers and either recycled or packaged and transported for disposal, present a potential vulnerability. The NRC, through the Materials Security Working Group, is addressing the security risks associated with this group of licensees and will be issuing enhanced security measures as part of its ongoing efforts to

address security for medium-priority radioactive materials licensees. The NRC has completed the enhanced security measures for high-priority licensees (e.g., reactor licensees) and anticipates completing enhanced security measures for the medium-priority radioactive materials licensees by December 2004. These measures consider all radioactive materials at licensees' facilities (both for NRC and Agreement State licensees). In addition, the NRC has undertaken other efforts to enhance security, such as establishing an interim database for sealed sources and ultimately establishing a National Source Tracking System.

Our detailed comments on the draft report are enclosed. If you have any questions on our comments or would like to discuss these issues further, please contact Melinda Malloy of my staff at 301-415-1785.

Sincerely,

/RA/

Luis A. Reyes
Executive Director
for Operations

Enclosure:
Comments on Draft GAO Report

cc: D. Feehan, GAO (Denver)

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