



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

29400
The Honorable Patty Murray
United States Senate
Washington, DC 20510

Dear Senator Murray:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your April 13, 2005, letter to me, in which you expressed concerns about a rulemaking regarding the disposal of low-activity radioactive waste and the conditions under which this waste may be disposed of at a facility not licensed by the NRC, such as a RCRA hazardous waste disposal facility. In particular, you were concerned about an application by the Connecticut Yankee Atomic Power Company (CYAPCO) to dispose of certain low-activity radioactive waste at a RCRA facility in Idaho, and whether an NRC decision on this application might be interpreted as preempting the rulemaking process.

identify them (RCRA)
Title 10 of the Code of Federal Regulations (10 CFR)
You referred to the ongoing NRC rulemaking on controlling the disposition of solid materials. The rulemaking package, which includes a proposed rule (including the statements of consideration for the proposed rule), a draft generic environmental impact statement, and the regulatory analysis, is currently before the Commission for review. These documents are available on NRC web site, <http://www.nrc.gov/materials.html> (under Key Topics, link to Controlling the Disposition of Solid Materials, and then to Current Events). In a separate action, CYAPCO has requested alternate disposal of building debris from site decommissioning under the existing provisions of ~~10 CFR~~ 20.2002.

~~section~~
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Additionally, the Environmental Protection Agency (EPA) is taking a broad look at the disposal of low-activity waste nationally, with the goal of improving clarity and consistency in the regulation of such materials. NRC worked with the EPA as EPA developed its Advance Notice of Proposed Rulemaking (ANPR) on this topic, and NRC expects to assist EPA in future related follow-up actions. At this time, the EPA is evaluating comments on the ANPR before deciding whether to proceed with a rulemaking.

You also asked about the CYAPCO application for disposal of radioactive demolition debris. The general requirements for alternate waste disposal are set forth in 10 CFR Part 20, Subpart K. Section 20.2002 states that a "...licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations in

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The CYAPCO request is not a precedent for disposal of radioactive materials at RCRA or other non-NRC-licensed facilities. The request was submitted under 10 CFR 20.2002, and other such requests have been made by licensees and granted by the NRC in the past. If a facility is State regulated, the disposal must comply not only with 10 CFR 20.2002 but also with State requirements. The CYAPCO request provides information to demonstrate that the material is acceptable for burial at a Subtitle C, RCRA hazardous waste facility in accordance with 10 CFR 20.2002. The RCRA facility is regulated by the State of Idaho Department of Environmental Quality, and any disposal must comply with State of Idaho requirements and be authorized by the State. Additionally, CYAPCO has also requested NRC approve disposal of their decommissioning debris at another RCRA facility in the State of Texas. This request is currently under staff review.

The Commission recognizes your interest in this matter and appreciates your comments.

I return b/w
Sincerely,

IS returns b/w
Nils J. Diaz

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"This correspondence addresses policy issues previously resolved by the Commission, transmits factual information, or restates Commission policy."

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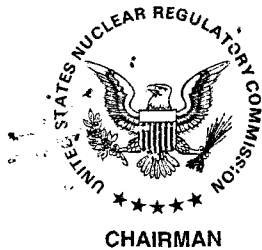
EPAD r/f KCyr, OGC SECY LTR-05-0216 B. Smith, OGC M. Miller, Rgn-1 OCA
R. Bellamy, Rgn-I D.Spitzberg, Rgn-IV M. Mclean, Rgn-IV S. Burns OPA
M. Rodgers P. Shea DWMEP r/f EDO R/F DCD r/f CAbams, IMNS

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You referred to an ongoing NRC rulemaking, which proposes various disposition paths for solid material with no or very small amounts of radioactivity from licensed operations. The rulemaking package, which includes a proposed rule (including the statements of consideration for the proposed rule), a draft generic environmental impact statement, and the regulatory analysis, is currently before the Commission for review. These documents are available on the NRC web site, <http://www.nrc.gov/materials.html> (under Key Topics, link to Controlling the Disposition of Solid Materials, and then to Current Events). In a separate action, CYAPCO has requested alternate disposal of building debris from site decommissioning under the existing provisions of 10 CFR 20.2002.

The current provisions for radioactive waste disposal in 10 CFR 20.2002 and the proposed rulemaking on controlling the disposition of solid materials cover different parts of the regulatory spectrum. The current 10 CFR 20.2002 requirements address alternative procedures for disposal on a case-by-case basis for either on-site or off-site disposal. The proposed rulemaking will address matters such as release and reuse of solid materials on a generic basis. NRC will continue to review and consider on a case-by-case basis licensee disposal requests under 10 CFR 20.2002 regardless of the Commission's decision on the proposed rulemaking on controlling the disposition of solid materials. If the proposed rule is promulgated, 10 CFR 20.2002 will remain in place and will still provide a means by which licensees can apply for case-specific reviews of proposed disposal procedures, not otherwise authorized in the other parts of the regulations.

Disposal of low-activity wastes from a variety of sources are taking place today, in accordance with state-issued RCRA permits, and in the case of NRC licenses, with specific authorizations that NRC issues based on safety and environmental protection findings. In a related matter, the Environmental Protection Agency (EPA) is considering the disposal of low-activity waste nationally, with the goal of improving clarity and consistency in the regulation of such materials. NRC worked with the EPA as EPA developed its Advance Notice of Proposed Rulemaking (ANPR) on this topic, and NRC expects to assist EPA in future related follow-up actions. At this time, the EPA is evaluating comments on the ANPR before deciding whether to proceed with a rulemaking.

You also asked about the CYAPCO application for disposal of radioactive demolition debris, which is an entirely separate matter from the ongoing rulemaking. The general requirements for alternate waste disposal are set forth in 10 CFR Part 20, Subpart K. Section 20.2002 states that a "...licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations in this chapter, to dispose of licensed material generated in the licensee's activities." CYAPCO, an NRC licensee, requested approval to dispose of demolition debris from decommissioning the Haddam Neck Plant at the US Ecology site in Idaho. The request was submitted on September 16, 2004, pursuant to Title 10 of the Code of Federal Regulations, Section 20.2002, "Method of Obtaining Approval of Proposed Disposal Procedures." This is a regulation of a long-standing, practical use that has been applied many times over the years. It is applicable to individual licensee requests and entails both a safety and an environmental evaluation for the unique and specific proposed disposal. Typically, these kinds of regulatory actions do not have the same level of public participation as a rulemaking, which require public hearings. Specifically, in typical NRC practice, requests for exemptions do not call for an adjudicatory hearing. See *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 466-467 (2001). An exemption is not the type of action listed in section 189 of the Atomic Energy Act that triggers the right to an adjudicatory hearing. Accordingly, the NRC staff do not hold public hearings for exemption requests, including this CYAPCO request.

Require the same public process as the rulemaking and common practice for rulemaking which can include public meetings

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The CYAPCO request is not a precedent for disposal of radioactive materials at RCRA or other non-NRC-licensed facilities. The request was submitted under 10 CFR 20.2002, and other such requests have been made by licensees and granted by the NRC in the past. If a facility is State regulated, the disposal must comply not only with 10 CFR 20.2002 but also with State requirements. The CYAPCO request provides information to demonstrate that the material is acceptable for burial at a Subtitle C, RCRA hazardous waste facility in accordance with 10 CFR 20.2002. The RCRA facility is regulated by the State of Idaho Department of Environmental Quality, and any disposal must comply with State of Idaho requirements and be authorized by the State. CYAPCO has also requested NRC approve disposal of



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You referred to an ongoing NRC rulemaking, which proposes various disposition paths for solid material with no or very small amounts of radioactivity from licensed operations. The rulemaking package, which includes a proposed rule (including the statements of consideration for the proposed rule), a draft generic environmental impact statement, and the regulatory analysis, is currently before the Commission for review. These documents are available on NRC web site, <http://www.nrc.gov/materials.html> (under Key Topics, link to Controlling the Disposition of Solid Materials, and then to Current Events). In a separate action, CYAPCO has requested alternate disposal of building debris from site decommissioning under the existing provisions of 10 CFR 20.2002. the X

The current provisions for radioactive waste disposal in 10 CFR 20.2002 and the proposed rulemaking on controlling the disposition of solid materials cover different parts of the regulatory spectrum. The current 10 CFR 20.2002 requirements address alternative procedures for disposal on a case-by-case basis for either on-site or off-site disposal. The proposed rulemaking will address matters such as release and reuse of solid materials on a generic basis. NRC will continue to review and consider on a case-by-case basis licensee disposal requests under 10 CFR 20.2002 regardless of the Commission's decision on the proposed rulemaking on controlling the disposition of solid materials. If the proposed rule is promulgated, 10 CFR 20.2002 will remain in place and will still provide a means by which licensees can apply for case-specific reviews of proposed disposal procedures, not otherwise authorized in the other parts of the regulations.

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Additionally, the Environmental Protection Agency (EPA) is taking a broad look at specifically disposal of low-activity waste nationally, with the goal of improving clarity and consistency in the regulation of such materials. NRC worked with the EPA as EPA developed its Advance Notice of Proposed Rulemaking (ANPR) on this topic, and NRC expects to assist EPA in future related follow-up actions. At this time, the EPA is evaluating comments on the ANPR before deciding whether to proceed with a rulemaking.

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WASHINGTON, D.C. 20555-0001

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United States Senate
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Subpart K. Section 20.2002 states that a "...licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations in this chapter, to dispose of licensed material generated in the licensee's activities." CYAPCO, an NRC licensee, has requested approval to dispose of demolition debris from decommissioning the Haddam Neck Plant at the US Ecology site in Idaho. The request was submitted on September 16, 2004, pursuant to Title 10 of the Code of Federal Regulations, Section 20.2002, "Method of Obtaining Approval of Proposed Disposal Procedures." This is a regulation of a long-standing, practical use that has been applied many times over the years. It is applicable to individual licensee requests and entails an environmental evaluation for the unique and specific proposed disposal. In reviewing the request, NRC staff determined that any radiation doses from the disposal will be maintained within the limits set forth in Part 20, "Standards for Protection against Radiation," and be as low as is reasonably achievable. The staff also evaluated the proposal to ensure it would not have a significant environmental impact. The NRC provided the States of Idaho and Connecticut with an opportunity to comment on a draft of the environmental assessment (EA) prepared by the staff in response to the CYAPCO request. The staff considered comments from both the States consideration and published the EA in the *Federal Register* on April 18, 2005. The NRC approved the CYAPCO alternate disposal request on April 19, 2005.

The CYAPCO request is not a precedent for disposal of radioactive materials at RCRA or other non-NRC-licensed facilities. The request was submitted under 10 CFR 20.2002, and other such requests have been made by licensees and granted by the NRC in the past. If a facility is State regulated, the disposal must comply not only with 10 CFR 20.2002 but also with State requirements. The CYAPCO request provides information to demonstrate that the material is acceptable for burial at a Subtitle C, RCRA hazardous waste facility in accordance with 10 CFR 20.2002. The RCRA facility is regulated by the State of Idaho Department of Environmental Quality, and any disposal must comply with State of Idaho requirements and be authorized by the State. Additionally, CYAPCO has also requested NRC approve disposal of

May want
to say
under 20.2002
don't have
public hearing
participation
(see NRC
for example)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

INMS, Kim/Fed
Comments 3/1/05

Parallel
Package

The Honorable Patty Murray
United States Senate
Washington, DC 20510

Dear Senator Murray:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your April 13, 2005, letter to me, in which you expressed a need for additional information on the disposal of low-activity radioactive waste and the conditions under which this waste may be disposed of at a facility not licensed by the NRC, such as a RCRA hazardous waste disposal facility. In particular, you were concerned about an application by the Connecticut Yankee Atomic Power Company (CYAPCO) to dispose of certain low-activity radioactive waste at a RCRA facility in Idaho, and whether an NRC decision on this application might be interpreted as preempting the rulemaking process.

~~An ongoing NRC rulemaking is involved in this~~

You referred to an ongoing NRC rulemaking, which proposes various disposition paths for solid material with no or very small amounts of radioactivity from licensed operations. The rulemaking package, which includes a proposed rule (including the statements of consideration for the proposed rule), a draft generic environmental impact statement, and the regulatory analysis, is currently before the Commission for review. These documents are available on NRC web site, <http://www.nrc.gov/materials.html> (under "Key Topics," link to "Controlling the Disposition of Solid Materials," and then to "Current Events"). In a separate action, CYAPCO has requested alternate disposal of building debris from site decommissioning under the existing provisions of 10 CFR 20.2002.

The current provisions for radioactive waste disposal in 10 CFR 20.2002 and the proposed rulemaking on controlling the disposition of solid materials cover different parts of the regulatory spectrum. The current 10 CFR 20.2002 requirements address alternative procedures for disposal on a case-by-case basis for either on-site or off-site disposal. The proposed rulemaking will address matters such as release and reuse of solid materials on a generic basis. NRC will continue to review and consider, on a case-by-case basis, licensee disposal requests under 10 CFR 20.2002 regardless of the Commission's decision on the proposed rulemaking on controlling the disposition of solid materials. If the proposed rule is promulgated, 10 CFR 20.2002 will remain in place and will still provide a means by which licensees can apply for case-specific reviews of proposed disposal procedures, not otherwise authorized in the other parts of the regulations.

Disposal of low-activity wastes from a variety of sources are taking place today, in accordance with State-issued RCRA permits. Additionally, the Environmental Protection Agency (EPA) is taking a broad look at specifically, disposal of low-activity waste nationally, with the goal of improving clarity and consistency in the regulation of such materials. NRC worked with the EPA as EPA developed its Advance Notice of Proposed Rulemaking (ANPR) on this topic, and NRC expects to assist EPA in future related follow-up actions. At this time, the EPA is evaluating comments on the ANPR before deciding whether to proceed with a rulemaking.

You also asked about the CYAPCO application for disposal of radioactive demolition debris. The general requirements for alternate waste disposal are set forth in 10 CFR Part 20,

concerns about an application by Connecticut Yankee Atomic Power Company (CYAPCO), to NRC, to dispose of radioactive demolition debris from the decommissioning of CYAPCO's Haddam Neck plant at a Resource Conservation & Recovery Act (RCRA) disposal facility in Idaho.

which is an entirely separate matter from 10 CFR 20.2002 application. This is a separate matter. The CYAPCO application presents a question that is not addressed by the rulemaking. The CYAPCO application is a request for a case-specific review of proposed disposal procedures, not otherwise authorized in the other parts of the regulations. The CYAPCO application is a request for a case-specific review of proposed disposal procedures, not otherwise authorized in the other parts of the regulations.

with State-issued RCRA permits. 3, in case of NRC review with specific authorization that NRC issues based on safety considerations and findings.

Senator Murray

Subpart K. Section 20.2002 states that a "...licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations in this chapter, to dispose of licensed material generated in the licensee's activities." CYAPCO, an NRC licensee, has requested approval to dispose of demolition debris from decommissioning the Haddam Neck Plant at the US Ecology site in Idaho. The request was submitted on September 16, 2004, pursuant to Title 10 of the Code of Federal Regulations, Section 20.2002, "Method of Obtaining Approval of Proposed Disposal Procedures." This is a regulation of a long-standing, practical use that has been applied many times over the years. It is applicable to individual licensee requests and entails an environmental evaluation for the unique and specific proposed disposal. In reviewing the request, NRC staff determined that any radiation doses from the disposal will be maintained within the limits set forth in Part 20, "Standards for Protection against Radiation," and be as low as is reasonably achievable. The staff also evaluated the proposal to ensure it would not have a significant environmental impact. The NRC provided the States of Idaho and Connecticut with an opportunity to comment on a draft of the environmental assessment (EA) prepared by the staff in response to the CYAPCO request. The staff considered comments from both the States consideration and published the EA in the *Federal Register* on April 18, 2005. The NRC approved the CYAPCO alternate disposal request on April 19, 2005.

approval CYAPCO has sought is for an authorization to use alternate disposal procedures, which is consistent with the language of 10 CFR 20.2002

The CYAPCO request is not a precedent for disposal of radioactive materials at RCRA or other non-NRC-licensed facilities. The request was submitted under 10 CFR 20.2002, and other such requests have been made by licensees and granted by the NRC in the past. If a facility is State regulated, the disposal must comply not only with 10 CFR 20.2002 but also with State requirements. The CYAPCO request provides information to demonstrate that the material is acceptable for burial at a Subtitle C, RCRA hazardous waste facility in accordance with 10 CFR 20.2002. The RCRA facility is regulated by the State of Idaho Department of Environmental Quality, and any disposal must comply with State of Idaho requirements and be authorized by the State. Additionally, CYAPCO has also requested NRC approve disposal of

Additionally,

FD

[but what about public participation?] ✓



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Patty Murray
United States Senate
Washington, DC 20510

Dear Senator Murray:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your April 13, 2005, letter to me, in which you expressed a need for additional information on the disposal of low-activity radioactive waste and the conditions under which this waste may be disposed of at a facility not licensed by the NRC, such as a RCRA hazardous waste disposal facility. In particular, you were concerned about an application by the Connecticut Yankee Atomic Power Company (CYAPCO) to dispose of certain low-activity radioactive waste at a RCRA facility in Idaho, and whether an NRC decision on this application might be interpreted as preempting the rulemaking process.

You referred to an ongoing NRC rulemaking, which proposes various disposition paths for solid material with no or very small amounts of radioactivity from licensed operations. The rulemaking package, which includes a proposed rule (including the statements of consideration for the proposed rule), a draft generic environmental impact statement, and the regulatory analysis, is currently before the Commission for review. These documents are available on the NRC web site, <http://www.nrc.gov/materials.html> (under Key Topics, link to Controlling the Disposition of Solid Materials, and then to Current Events). In a separate action, CYAPCO has requested alternate disposal of building debris from site decommissioning under the existing provisions of 10 CFR 20.2002.

The current provisions for radioactive waste disposal in 10 CFR 20.2002 and the proposed rulemaking on controlling the disposition of solid materials cover different parts of the regulatory spectrum. The current 10 CFR 20.2002 requirements address alternative procedures for disposal on a case-by-case basis for either on-site or off-site disposal. The proposed rulemaking will address matters such as release and reuse of solid materials on a generic basis. NRC will continue to review and consider on a case-by-case basis licensee disposal requests under 10 CFR 20.2002 regardless of the Commission's decision on the proposed rulemaking on controlling the disposition of solid materials. If the proposed rule is promulgated, 10 CFR 20.2002 will remain in place and will still provide a means by which licensees can apply for case-specific reviews of proposed disposal procedures, not otherwise authorized in the other parts of the regulations.

Disposal of low-activity wastes from a variety of sources are taking place today, in accordance with state-issued RCRA permits, and in the case of NRC licenses, with specific authorizations that NRC issues based on safety and environmental protection findings. In a related matter, the Environmental Protection Agency (EPA) is considering the disposal of low-activity waste nationally, with the goal of improving clarity and consistency in the regulation of such materials. NRC worked with the EPA as EPA developed its Advance Notice of Proposed Rulemaking (ANPR) on this topic, and NRC expects to assist EPA in future related follow-up actions. At this time, the EPA is evaluating comments on the ANPR before deciding whether to proceed with a rulemaking.

You also asked about the CYAPCO application for disposal of radioactive demolition debris, which is an entirely separate matter from the ongoing rulemaking. The general requirements for alternate waste disposal are set forth in 10 CFR Part 20, Subpart K. Section 20.2002 states that a "...licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations in this chapter, to dispose of licensed material generated in the licensee's activities." CYAPCO, an NRC licensee, requested approval to dispose of demolition debris from decommissioning the Haddam Neck Plant at the US Ecology site in Idaho. The request was submitted on September 16, 2004, pursuant to Title 10 of the Code of Federal Regulations, Section 20.2002, "Method of Obtaining Approval of Proposed Disposal Procedures." This is a regulation of a long-standing, practical use that has been applied many times over the years. It is applicable to individual licensee requests and entails both a safety and an environmental evaluation for the unique and specific proposed disposal. Typically, these kinds of regulatory actions do not have the same level of public participation as a rulemaking, which require public hearings. Specifically, in typical NRC practice, requests for exemptions do not call for an adjudicatory hearing. See *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 466-467 (2001). An exemption is not the type of action listed in section 189 of the Atomic Energy Act that triggers the right to an adjudicatory hearing. Accordingly, the NRC staff do not hold public hearings for exemption requests, including this CYAPCO request.

The NRC provided the States of Idaho and Connecticut with an opportunity to comment on a draft of the environmental assessment (EA) prepared by the staff in response to the CYAPCO request. The staff considered comments from both the States and published the EA in the *Federal Register* on April 18, 2005. In reviewing the request, NRC staff determined that any radiation doses from the disposal will be maintained within the limits set forth in Part 20, "Standards for Protection against Radiation," and be as low as is reasonably achievable. The staff also evaluated the proposal to ensure it would not have a significant environmental impact. The NRC approved the CYAPCO alternate disposal request on April 19, 2005.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Norm Dicks
Congress of the United States
Washington, DC 20515

Dear Congressman Dicks:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your April 13, 2005, letter to me, in which you expressed a need for additional information on the disposal of low-activity radioactive waste and the conditions under which this waste may be disposed of at a facility not licensed by the NRC, such as a RCRA hazardous waste disposal facility. In particular, you were concerned about an application by the Connecticut Yankee Atomic Power Company (CYAPCO) to dispose of certain low-activity radioactive waste at a RCRA facility in Idaho, and whether an NRC decision on this application might be interpreted as preempting the rulemaking process.

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Senator Murray

- 3 -

their decommissioning debris at another RCRA facility in the State of Texas. This request is currently under staff review.

The Commission recognizes your interest in this matter and appreciates your comments.

Sincerely,

Nils J. Diaz

Congressman Dicks

- 3 -

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Nils J. Diaz

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