



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

COMMISSION
CORRESPONDENCE

May 29, 1980

The Honorable Harley O. Staggers
Chairman, Committee on Interstate
and Foreign Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the Nuclear Regulatory Commission's (NRC) views on H.R. 6570, a bill to provide federal assistance to the states for their development of burial grounds for the disposal of low-level radioactive wastes and to permit the interim disposal of such wastes in existing federal facilities until states establish such disposal sites.

H.R. 6570 would encourage states to establish burial grounds for low-level radioactive wastes. The Commission agrees that there is a national need for more low-level waste disposal sites and that these sites should be equitably distributed. Moreover, the Commission believes that the states should be responsible for the low-level wastes generated within their borders. State residents benefit from the nuclear technologies which produce these wastes and the waste is not sufficiently hazardous nor composed of such materials that Federal assumption of responsibility for them is required. However, this does not imply that each state should have its own disposal site. We believe that it may be preferable for the states to approach this problem on a regional basis and work out regional solutions.

Section 4(i) would authorize states to enter into agreements and compacts to establish regional disposal sites for low-level radioactive waste. The National Governors Association has supported voluntary compacts for some time as a means for dealing with interstate issues. We understand that this provision would eliminate the need for specific federal legislation for each compact, thereby encouraging states to assume their appropriate responsibility for the disposal of low-level waste. We fully endorse that purpose.

H.R. 6570 would authorize the Secretary of Energy (Secretary) to dispose of commercial low-level radioactive wastes at existing DOE facilities if that waste is generated in a state which commits to the establishment of facilities for such waste. This availability of federal disposal facilities is intended to provide an incentive for states to encourage the development of disposal facilities in their borders. Several practical considerations could limit the efficacy of this incentive. First, DOE, in its draft study of Federal burial facilities, reports that most DOE facilities would be unable to accept commercial low-level waste without substantial investments in new equipment. Investment

in such equipment could provide an economic incentive for the continued use of DOE facilities. Moreover, other DOE sites suitable for disposing of commercial low-level waste are located in those states which currently contain commercial disposal sites. Governors in those states may not be willing to permit the additional burial of commercial wastes at DOE sites in their borders. Finally, H.R. 6570 does not provide for a state role in the federal decision-making process for the utilization of existing DOE sites. Thus, the Commission believes that the proposed incentive requires further consideration before enactment of this bill.

The Commission also has the following comments on specific provisions of this bill.

Section 4

This Section would authorize the Secretary of Energy to permit the use of federal disposal facilities for the burial of commercially generated low-level radioactive waste from specified geographical areas. However, it is unclear who is to specify these geographical areas, what the criteria are for such specification, and what procedures will be used. If the Secretary is to specify the geographical areas without consultation by the states, he may establish regions inconsistent with any established by state agreements or compacts. The Commission recommends that this section be amended to clarify these matters.

Section 4(b) would require a state to commit to the burial of future wastes over a "reasonable" period of time as a condition for that state's utilization of a Federal disposal site. The Commission believes that this section should be redrafted to be specific regarding a reasonable period of time for facility operation.

Section 4(b) appears to be inconsistent with the proposed authorization of state agreements or compacts provided by Section 4(i). Section 4(b) would require a state to commit to the establishment of a regional disposal facility within its borders as a condition precedent to the interim disposal of radioactive waste in a federal facility in that state. However, that state may be a party to an agreement with other states which contain more suitable disposal sites. Thus, the Commission recommends that the Section 4(b) should be amended to permit a state to also utilize a federal facility if that state is a party to a compact or agreement which includes a state which has committed itself to the establishment of a regional disposal facility.

Section 4(b) would authorize the Secretary to approve state imposed restrictions on the burial of wastes in State facilities if those restrictions are based on the risks or dangers inherent in particular wastes. This provision would create an overlap of jurisdiction by the Secretary and the agency responsible for regulating the radiologic health and safety aspects of waste disposal (either the NRC or an Agreement State). Accordingly, the Commission recommends that this provision be modified to eliminate this jurisdictional overlap.

Section 4(d) would authorize the Secretary of Energy to grant a six-month extension for state utilization of a federal disposal facility upon a determination that that state has acquired a burial facility of its own. Section 8 defines a facility to include equipment, plant, utilities, and machinery. The Commission believes that a state should not be required to acquire these components so far in advance of operation to qualify for such an extension.

Section 4(i) does not address the issues regarding jurisdiction of a regional site by a group comprised of Agreement and Non-Agreement States. For example, if a regional site was located in a Non-Agreement State, the Commission would retain licensing authority over the site and, thus, over radioactive waste from Agreement States to which it had otherwise relinquished NRC jurisdiction. (See Section 274b of the Atomic Energy Act of 1954, as amended.) The Congress should consider whether the NRC should retain jurisdiction over a site established and operated by a regional compact that includes Agreement and Non-Agreement States.

Section 5

H.R. 6570 would authorize the Secretary of Energy to assist states with research, development, and siting of disposal facilities. The provision of these incentives by DOE appears to be appropriate. In addition, the Commission believes that the NRC should be authorized to provide technical assistance to state regulatory authorities.

Section 6

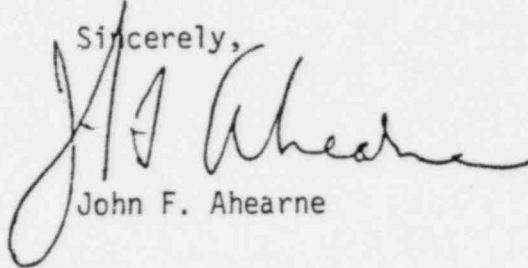
Section 6(1) provides that planning activities in preparation for the selection of a site for a burial ground shall not be considered as major federal actions. The Commission believes that these planning activities should be specified.

Section 6(2) provides that alternative means of disposing of low-level radioactive waste need not be considered in any environmental impact statement which may be required in connection with the development of a low-level radioactive waste burial ground proposed to be established under this bill. The consideration of alternatives has often been described as the "linch-pin" of the environmental

decision-making process. Moreover, burial may not provide the environmentally preferable means for disposing of certain types of low-level waste. Accordingly, the Commission recommends the deletion of this provision.

Thank you for this opportunity to comment on these matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. F. Ahearne". The signature is written in dark ink and is positioned above the printed name.

John F. Ahearne