

CINTICHEM, INC.

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February 4, 1991

Mr. James Kennedy
U. S. Nuclear Regulatory Commission
Office of Nuclear Materials Safety and Safeguards
Washington, DC 20555

Dear Mr. Kennedy:

SUBJECT: Request for Comment Regarding NRC SECY 90-318 in
FR Vol. 55 No. 233, December 4, 1990

Cintichem is currently planning to decommission its nuclear research reactor and radiochemical processing facilities in Tuxedo, New York. This decommissioning process will generate low level waste that will require continued access to disposal facilities in order to successfully complete this decommissioning project.

Cintichem is pleased to present comments on the subject Federal Register Notice regarding the title transfer provisions of the Low Level Radioactive Waste Policy Amendment Act of 1985 (The Act). We wish to underscore the importance of the Commission's anticipation of the implementation of the "take-title" provision of the Act primarily to avoid or reconcile complications that may interfere with this process. It is imperative that the safe and effective management of low level waste continue throughout the mandated transition in the Act, otherwise the common good that is derived from the many and diverse enterprises using nuclear technology will be jeopardized.

The Commission should emphatically encourage States to adhere to the schedule defined in the Act for developing waste management and disposal capabilities. The staff proposal to issue a letter by the Commissioner offering guidance for adhering to this schedule is appropriate at this time.

It is apparent at this time that many States or Compacts will have to rely on interim storage of low level waste beyond January 1, 1993. It is also likely that New York and other States will be required to store waste beyond the January 1, 1996 deadline for the title transfer provision of the Act. At this time the date for having an operational waste disposal facility in the State of New York is not well defined and there may be a requirement for interim waste storage beyond the currently planned 5 year period beginning January 1993 (i.e. beyond 1998).

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The NRC plan to issue licenses for interim storage for 5 years should be reexamined in light of the current and projected status of the States' preparedness to accept waste for permanent disposition. Perhaps storage licenses of indefinite terms with surveillance and remediation requirements would be more appropriate. Anticipating the need for longer storage terms now may avoid the need for extraordinary measures in the future. The provision for indefinite storage may tend to discourage adherence to the mandated milestones in the Act but we believe that the financial penalties provided in the Act for States that miss the January 1996 deadline outweigh any implied relief from the allowance for an indefinite storage term.

The current guidance for interim storage should be coupled with an effective surveillance and remediation program thereby effectively assuring safety and integrity of the stored LLW. The added cost of the surveillance and remediation would likely be included in the financial liability to be assumed by the States as mandated by the Act.

The title transfer provision of the Act may lead to complications if a State is not ready to take physical possession after January 1, 1996. Title and responsibility will pass to a State while the waste remains on the premises of the generators. Assuming that continued management of the waste in storage will be necessary, arrangements regarding use of the generators' facilities for storage, movement of the waste to State owned or operated facilities, personal and property liability, transfer of licenses, and other issues will have to be addressed in advance of January 1, 1996. If only title passes and the waste remains in the possession of the generator, who will manage the conditions of storage? It is assumed that, if the waste is not moved, lease agreements will be required for a State to occupy the storage space, and generators may act as contractors of States to manage the storage. States will have to anticipate the refusal of or inability of generators to continue storing waste. At this time, the possible complications seem to be countless. These can be managed provided sufficient preparation is allowed between generators and States. Guidance for implementation of all possible options should be promulgated well in advance of January 1996.

The Cintichem facility will be very close to having all radioactive material off site by January 1993. Denial of access to disposal facilities at this time would prevent the completion of the decommissioning project. Substantial resources would have been expended in an effort to return the facility to productive use. Interrupting the decommissioning process near the end of the project could be compromising monetarily and environmentally. In cases like this, the NRC should consider allowing continued access under some emergency provisions.

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The question of conflicting State and Federal laws regarding title transfer has already been raised. A recent decision by U. S. District Judge Cholakis dismissed Governor Cuomo's challenge to the provision of the Act requiring States to manage LLW by January 1993 and it reinforced the "take-title" provision. If this decision prevails in any appeal that may ensue, any State or local law that is in conflict with this provision of the Act will be preempted by the Act. The NRC must presume that the provisions of the Act will prevail and it must continue to emphatically encourage States to maintain compliance and to regulate States' compliance as appropriate.

The development and initial operation of low level waste disposal facilities has evolved into a process that takes several years to accomplish under ideal technical, social and political conditions. It is apparent now that few States or compacts will be able to manage its indigent waste by January 1, 1993. The Commission should use whatever authority it has under the Atomic Energy Act and its Amendments to obtain the assurance it needs that the general health and welfare of the public will be maintained and protected with regard to the proper and safe management and disposal of low level radioactive waste. This assurance should not be limited to the consequences of insufficient or makeshift waste management programs but it should assume a broader view of the risks to the general health and welfare of the public if the benefits that are derived from the many valuable uses of nuclear technology are adversely affected.

Very truly yours,



J. J. McGovern
President/Plant Manager

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