

Cortland County
Low-Level Radioactive Waste Office

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Robert M. Bernero
Director
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Bernero:

Thank you for meeting with Cortland County representatives on February 5, 1991. We found the discussions with NRC representatives to be quite informative, and in the interest of clarity, I would like to reiterate below what I perceive to be the major issues raised during the meeting.

With regard to the NRC's sentiments concerning long-term on-site storage of LLRW, SP-90-80 (Storage of Low-Level Radioactive Waste, May 3, 1990) and SECY 90-318 do not in any way establish NRC **policy**. Rather, the NRC's "not looking favorably" on point of generation storage is merely a "posture" and not a policy statement at all. The NRC, which considers its primary directive to be protection of public health and safety, does not wish to promote what it believes to be bad safety practices; nor does the NRC wish to be an impediment to the LLRW Policy Amendments Act (LLRWPA).

Concerning the issue of implementing sound management practices for the protection of public health, you did assert that neither you nor any other staff member saw technical limitations with long-term on-site storage. We were certainly pleased to hear you acknowledge this fact. The successful on-site storage program in Ontario demonstrates that safe long-term storage is feasible, and even those in the nuclear industry have conceded that LLRW storage at reactor sites is not a technical problem.

With regard to the NRC's role in the LLRWPA, you did acknowledge (and concur with our statements) that the NRC has absolutely no authority to enforce the provisions of the LLRWPA. While the NRC does not wish to impede the states' progress in meeting the terms of the LLRWPA, it also does

not have the responsibility to hurry the states along in meeting the Act's terms. The NRC does not wish to facilitate "indefinite" storage. (From our conversations, we assume that "indefinite" is imprecisely defined to mean "not seeing an end in sight.") However, if a state has a program in place and is proceeding toward developing disposal capacity, the NRC would not categorically reject generators' applications to extend storage beyond the five-year limit.

The NRC must develop guidance for its technical staff to review such applications. Based on discussions at the meeting, it is our understanding that applications to extend storage will be considered almost exclusively on the basis of technical and safety concerns and not administrative or political factors. That is, when such applications are reviewed by NRC staff, relevant and appropriate technical guidelines are to provide the basis for rendering a decision. Thus, while the NRC may "look askance" at the concept of long-term on-site storage of LLRW, previously released documents (SP-90-80) merely reflect this sentiment, but do not in any way represent NRC policy decisions upon which future license amendments will be evaluated.

In our discussions, you stated it was your understanding that New York State is planning for ten years of storage, and that the NRC saw no difficulties with that. As stated at the meeting, we believe that the NRC is under misconceptions regarding New York State's program. Certainly, the state must plan for a longer period of interim storage than what had been anticipated prior to the adoption in August 1990 of legislative amendments to the 1986 LLRW Management Act. However, at the present time, no one in the state - including the LLRW Siting Commission - is confident of the time frame involved. We were interested to note that the NRC found no problems with a state plan for ten years of storage while siting activities are being pursued.

The ten year figure which you quoted was mentioned in the Governor's letter because New York State is conducting a study of long-term on-site storage. One provision of the study includes an evaluation of the existing storage capacity of all New York State generators and the ability of each generator to increase storage capacity at its facility for a period of at least ten years. This study is a data gathering exercise only - NYSERDA will not be making recommendations or policy decisions regarding the state's interim management plans. However, the study should provide adequate information which the state can use to formulate a comprehensive management program.

In discussing the national LLRW management situation, you indicated the NRC believed that only the northeastern states

would need a long-term interim management program. At the meeting, we did not wish to belabor the point. However, it is instructive to note that, according to The Radioactive Exchange, Judge Bill Moody of the 34th District Court in Hudspeth County, Texas voided the Texas LLRW Authority's site selection decision. Depending on the appeal, of course, it is possible that this could place Texas in a precarious situation. In addition, newly elected Governor John Engler of Michigan has voiced vehement opposition to his state's hosting the disposal facility for the Midwest Compact. Based on conversations with Chem-Nuclear representatives in Barnwell, it is our understanding that development of the North Carolina site (for the Southeast Compact) will take 18 to 24 months longer than had been originally anticipated. In addition, in Pennsylvania (Appalachian Compact), while progress has been made, specific sites have yet to be named, and it is public reaction to the site selections that will, to a large degree, determine if and how the process will proceed to fruition. We submit that the national situation is not as optimistic as you indicated during the meeting.

Three final issues include: 10 CFR Part 61 regulations regarding location of disposal sites within close proximity to nuclear reactors; Department of Energy (DOE) acceptance of commercial mixed wastes; and implications of the constitutionality challenge of the LLRWPA.

From discussions during the meeting, it is our understanding that Part 61 in no way precludes serious consideration of reactor lands as potential disposal sites. While Part 61 states that proximity to the plants should be considered, this should not be misinterpreted as excluding these lands from being evaluated as disposal facility locations.

As we mentioned, it is our understanding that the DOE is considering accepting commercial mixed wastes for disposal at its federal sites. Are there any outstanding issues concerning the liability associated with these wastes? Also, at the meeting we never did resolve whether legislative action would be required to allow DOE to accept these wastes for disposal. We will speak with Dan Berkowitz about this matter, but we would also appreciate any clarification that NRC could offer.

Finally, you indicated that the NRC does not have any contingency plans in place in the event that any or all of the LLRWPA is found to be unconstitutional. We would be interested in receiving information regarding the NRC's future considerations of this topic.

Thank you for taking the time to meet with us to discuss these very important issues. If we have misinterpreted any of the matters discussed at the meeting, please feel free to

offer comment and clarification.

Sincerely,

Cindy M. Monaco

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