



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

October 24, 1989

Richard Bangart

MEMORANDUM FOR: Richard Bangart, Director
Division of Low Level Waste Management
and Decommissioning

Stuart A. Treby, Assistant General Counsel
for Rulemaking and Fuel Cycle
Office of the General Counsel

FROM: Vandy L. Miller, Assistant Director *V. Miller*
for State Agreements Program
State, Local and Indian Tribe Programs

SUBJECT: RESPONSE FROM THE STATE OF TENNESSEE (TN)
TO NRC REGARDING TN PROHIBITION OF TN WASTE
PROCESSORS FROM HANDLING WASTE FROM STATES
NOT IN COMPLIANCE WITH LLRWPA

Enclosed is a response from the State of Tennessee dated September 29, 1989 to our letter dated September 14, 1989 regarding the State of Tennessee's actions regarding low-level waste processed in Tennessee from States not in compliance with the Low-Level Radioactive Waste Policy Amendments Act (LLRWPA). The State maintains that the actions taken were pursuant to their charge to protect the health of citizens and environment of Tennessee.

The State is requesting that NRC assist Tennessee in assuring that NRC licensees do not create additional problems of waste storage for Tennessee from those States that are not in compliance with LLRWPA. We would appreciate your comments by November 3, 1989. We have enclosed copies of previous correspondence on this matter. If you have any questions, please contact Kathleen Schneider at extension 20320.

Enclosures:
As stated

8911300118 891122
FDR WASTE
WM-3

FDC

FROM
Vandy L. Miller

DATE OF DOCUMENT
10/24/89

DATE RECEIVED
10/26 for ticket

NO
LLWM 89-115
UNCLASSIFIED

LTR MEMO REPORT OTHER

TO
ORIG. CC OTHER

Richard Bangart

ACTION NECESSARY CONCURRENCE DATE ANSWERED
NO ACTION NECESSARY COMMENT BY 11/03/89 11/83

CLASSIF. POST OFFICE REG. NO. FILE CODE

DESCRIPTION (Must Be Unclassified)
RESPONSE FM THE STATE OF TN TO NRC RE
TN PROHIBITION OF TN WASTE PROCESSORS
FM HANDLING WASTE FROM STATES NOT IN
COMPLIANCE WITH LLRWPA

ENCLOSURES
Closed 11/23/89
per memo to Vandy Miller
from Richard Bangart.

REMARKS

REFERRED TO	DATE	RECEIVED BY	DATE
Lohaus	10/26	PLK	10/26
MD-111 ✓	10/26		

NOV 20 1989

MEMORANDUM FOR: Vandy L. Miller, Assistant Director
 for State Agreements Program
 State, Local and Indian Tribe Programs
 Office of Governmental and Public Affairs

FROM: Richard L. Bangart, Director
 Division of Low-Level Waste Management
 and Decommissioning
 Office of Nuclear Material Safety
 and Safeguards

SUBJECT: RESPONSE TO TENNESSEE (TN) REGARDING PROHIBITION OF TN
 PROCESSORS FROM HANDLING LLW FROM STATES NOT IN COMPLIANCE
 WITH LLRWPA

Enclosed per your request are our comments on the letter from Mr. Michael Mobley, Director of the Division of Radiological Health in the Tennessee Department of Health, on the above subject. For your convenience, we have put our comments in the form of a draft letter in response to Mr. Mobley. We recommend, however, that appropriate representatives of our Offices and the Office of the General Counsel discuss this issue with Mr. Mobley before sending him any written response.

Richard L. Bangart, Director
 Division of Low-Level Waste Management
 and Decommissioning, NMSS

Enclosure: As stated

Distribution: Central File # 414.6 (TICKET # LLWM 89-115) NMSS r/f
 RBangart, LLWM JGreeves, LLWM MBell, LLRB JSurmeier, LLTB
 PLOhaus, LLOB RMacDougall, LLOB RFonner, OGC JJones, LLOB r/f
 RFonner, OGC JLepre, LLWM JJones, LLOB t/f

PDR YES

PDR NO Category: Proprietary or CP Only

ACNW YES NO

SUBJECT ABSTRACT: PROPOSED TENNESSEE PROHIBITION ON LLW PROCESSORS

OFC :LLOB *RLOH* :LLOB *JF* :OGC *JF* :LLWM *JF* :LLWM :NMSS

NAME:RMacDougall/jj :PLOhaus :RFonner :RBangart : :

Date:11/2/89 :11/2/89 :11/2/89 :11/ /89 :11/ /89 :11/ /89

LLWM INPUT TO RESPONSE
TO TENNESSEE REGARDING
OUT-OF-STATE LLW
AT TENNESSEE-LICENSED PROCESSING SITES

Dear Mr. Mobley:

I am writing in response to your letter of September 29, 1989, asking the Nuclear Regulatory Commission (NRC) to "become very proactive in the ongoing evolution of the LLW process of this country," and assist in assuring that "NRC licensees do not create additional problems for Tennessee."

As we understand your concern, these additional problems could arise because substantial quantities of low-level wastes (LLW) from states not in compliance with the Low-Level Radioactive Waste Policy Amendments Act (LLRWPA) - and therefore not acceptable for timely disposal - could accumulate for indefinite long-term storage at waste processing sites licensed by Tennessee.

We are uncertain, however, as to what actions you believe NRC should take in this matter. If, for example, you are proposing that the Nuclear Regulatory Commission (NRC) attempt to prohibit all licensed waste generators from shipping wastes to another state or compact region for processing if the state in which the generators are licensed has been found to be out of compliance with the LLRWPA, you should know that there are significant limits on both our statutory authority and our resources for this. Neither the LLRWPA nor the Atomic Energy Act, as amended, enables NRC to impose health and safety regulatory requirements for the effective purpose of assuring timely implementation of the LLRWPA. For the same reason, NRC has no authority to require Agreement States to apply such measures as a matter of compatibility with federal requirements. Even if such authorities were available, we doubt that NRC or Agreement State resources would be best employed to establish and enforce at a multitude of sites measures to avert potential problems that can most effectively be addressed at the few sites where the problems might arise.

NRC can, however, directly assist your own efforts to address potential storage problems at State-licensed LLW processing sites. As an Agreement State, Tennessee has the primary responsibility for assuring the protection of radiological health and safety at these installations. We believe that the State's existing authorities are adequate for this purpose. If your object is to assure that wastes that cannot be shipped for disposal after processing do not accumulate in hazardous quantities at processing sites, we believe Tennessee has available to it ample regulatory alternatives to a general ban on the processing or storage of wastes generated in out-of-compliance states. These alternatives might include: license conditions providing that pre-treatment storage of wastes from out-of-compliance states be no longer than the time needed for orderly processing; conditions requiring treatment of such wastes as soon as practicable given the facility's treatment batching schedule at the time of their receipt; conditions limiting post-treatment storage or

requiring return of such treated wastes to their generators; conditions requiring assurances from generators or other responsible authorities in out-of-compliance states to accept treated wastes that cannot be shipped for disposal, or some combination of these. We would be pleased to discuss these alternatives with you in more detail if you believe this kind of NRC assistance would be useful.

We appreciate your commitment to identifying and seeking timely solutions to a potential regulatory problem with national waste management implications. We also share your desire to avoid impediments to the safe and efficient of LLW across state and regional borders. I hope this clarification of our views helps you to focus Tennessee's regulatory efforts.