



NUCLEAR METALS, INC.

23 January 1991

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

Reference: SECY 90-318

Dear Mr. Kennedy,

Everyone involved with the management of low-level radioactive waste (L.L.W.) is vitally interested in actions pursuant to the Low-Level Radioactive Waste Policy Amendments Act (the "Act"). As a manager of L.L.W. for an industrial generator, I would like to respond to your Federal Register notice of 4 December 1990 and provide another perspective for your consideration. While the Act charges the Commission with certain specific responsibilities, NRC's approach and emphasis in discharging them will have a significant impact on the emerging form and effectiveness of our national L.L.W. management system.

It has been widely observed that title to, and possession of, L.L.W. must reside in the same party. If states were forced to take title, but not possession, they would escape the burden that is supposed to serve as an incentive for them to succeed in their efforts to provide disposal capacity. Waste generators would simply be forced into storing waste that "belonged" to the states, with potential loss of discretion and control over storage conditions.

The fundamental weakness of the waste title and possession transfer provisions is that they are based on unrealistic expectations about the outcomes of the provisions of the Act. If all states had effectively discharged their statutory responsibilities to provide for disposal capacity, temporary storage would not be under discussion today. There is no apparent reason to believe that the very states that were unable or unwilling to provide for disposal capacity will be willing and able to provide for storage capacity under the motivation of the same law. The procedural, political, and public relations problems involved in establishing a (new) state radwaste storage facility are likely to be almost as formidable, expensive, and time consuming as those that would be confronted in siting a disposal facility. The unavoidable implication of this is that no new storage facilities are going to be sited, designed, and built.

It is also clear that no responsible state official is going to pick out an existing empty warehouse or an armory, designate it as a L.L.W. storage site, and tell generators to start shipping. Environmental, safety, and public health considerations will properly preclude such a course. Nor would the NRC sanction it. In other words, there will be no ad hoc storage facilities.

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2229 Main Street, Concord, Massachusetts 01742 (508) 369-5410

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Since there will be no storage facilities, designed or extemporized, waste will not be moved. That is to say, it will continue to accumulate on the premises of the generators. One possible way that a state could technically comply with the provisions of the Act in such a situation might be to exercise its right of eminent domain in the interest of "public welfare" to appropriate portions of waste generators' property (e.g. separate storage structures or storage portions of plant buildings). This would "place" the stored wastes on "state property," in facilities that already met regulatory requirements for storage, and could arguably constitute compliance with the requirement to take physical possession. It is not clear that waste could be better or more safely stored under such a scenario. To the contrary, limited state manpower and budget resources and transfer of management responsibilities to officials less intimately knowledgeable of the materials and physically removed from the site could conceivably degrade surveillance and storage safety. The intended incentive for states to provide for disposal capacity would be nullified, and the process of establishing new disposal sites could be prolonged. Generators would be deprived of important property rights, and their circumscribed ability to manage their physical resources could adversely impact on the efficiency and safety of other licensed activities. Congressional intent in framing the Act would be circumvented. NRC planning should include measures and actions to discourage states from pursuing such a course.

Any long term requirement for on-site storage of L.L.W. will present serious problems for the generating community. As such wastes accumulate and storage areas expand to accommodate them, generators can reasonably expect that business growth will be curtailed or that they will have to fund costly plant expansions. Expansions will not even be feasible for many facilities where construction has already reached the limits imposed by local building codes and zoning ordinances. Gradual erosion of a business' financial ability to properly safeguard stored wastes, while the volume of such wastes grows, would not be in the best interests of public health and safety.

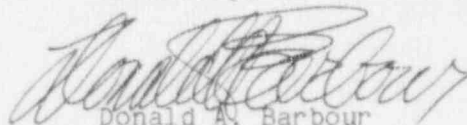
The only acceptable management option for L.L.W. is secure, permanent disposal. Whether or not, as a nation, we actually need new disposal sites, in view of the dramatic reductions in waste volume being achieved, we seem committed to developing them. That being the case, nothing should be allowed to distract or divert our collective efforts from completing the compacting process and constructing whatever sites are appropriate. NRC can encourage progress in two ways. First, the Commission should make licensing criteria and procedures for "interim" storage facilities as rigorous and exacting as possible, in the realization that, if any are actually licensed, they will inevitably be used for periods much longer than initially represented and will very likely become de facto above

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grade disposal facilities. The level of care and attention to detail devoted to the establishment of such a "storage" facility should ideally be at least as great as for the forthright licensing of a disposal facility so that states will not be tempted to take an "easier" course and will finally confront the hard challenges of negotiating compact membership or siting a repository. Second, NRC should be attuned to the possibility of innovative evasions such as the eminent domain ploy described above and should develop strategies that can be employed to prevent or counter them so that the overall process is kept on track.

The role of the Commission in the development of a national L.L.W. management system is indeed an important one. NRC must insure that its individual actions pursuant to the Act are structured and carried out in such a way that the overall intent of Congress in framing the Act is fulfilled.

Sincerely,



Donald A. Barbour
Manager, L.L.R.W. Services

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