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

RE: SECY 90-318

Dear Mr. Kennedy:

This letter is in response to the paper entitled "Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions" and related issues.

At the outset, I would like to express my emphatic disagreement with the manner in which the NRC is addressing this issue. The NRC has already pronounced that "it will not look favorably" on long-term on-site storage beyond January 1, 1996. This policy was adopted without public comment or input, and is not even directly under consideration in SECY 90-318. For the reasons in my letter of June 8, 1990, (to which no one from the NRC has responded), and on behalf of Cortland County, I once again call upon the NRC to rescind this policy.

It is obvious that SECY 90-318 is not a serious analysis of any substantive issues. It is only yet one more attempt to hasten the states into becoming the waste handlers for the nuclear power industry. Nevertheless, I will respond to the eight questions presented.

1. "What factors should the Commission consider in deciding whether to authorize on-site storage of LLW beyond January 1, 1996?"

In deciding issues concerning on-site storage of LLW beyond January 1, 1996, the Commission should consider public health, safety, and the environment. (According to its own policy statement, the NRC has already made a decision concerning storage. This decision is obviously based on other considerations contrary to those above, i.e., the NRC's desire to expedite state disposal facility construction.)

2. "What are the potential health and safety and environmental impacts of increased reliance on on-site

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storage of LLW?"

If the potential for adverse effects exists, this has not been explained to the public. The significance of any such possible impacts might be difficult to explain since the NRC has recently determined that HLW can be safely stored on-site for 100 years at every nuclear power plant. This determination is inconsistent with the LLW storage policy that the NRC has adopted. SECY 90-318 certainly does not identify any negative effects, but it does indicate that state governors should be told that some exist. The NRC should analyze the benefits of allowing longer-term on-site storage. The additional time will allow states and compacts to search out and develop environmentally sound solutions, rather than rush to meet arbitrary (and technically unfounded) deadlines created by the NRC. The most important question is whether states can develop technically safe and environmentally sound solutions while adhering to the NRC's anti-storage policy for LLRW.

3. "Would LLW storage for other than operational needs beyond January 1, 1996 have an adverse impact on the incentive for timely development of permanent disposal capacity?"

The NRC's zeal in pressuring the states to hasten the building of disposal facilities is truly remarkable, especially when that is contrasted to the federal progress in the HLW disposal program. This is even more remarkable when one realizes that the NRC was never given any enforcement role in disposal facility timing. Furthermore, the NRC has taken it upon itself to decide that a state on-site storage program does not comply with the LLRW Policy Amendments Act (LLRWPA). This is a very questionable interpretation of the law, and, once again, an issue that should have been presented for public comment before adopting a policy.

4. "What specific administrative, technical, or legal issues are raised by the requirements for transfer of title?"

Consideration of these ephemeral issues is not the charge of the NRC. The NRC should occupy its time by considering environmental, health, and safety issues which are pertinent to any specific license application for a disposal site.

5. "What are the advantages and disadvantages of transfer of title and possession as separate steps?"

I reiterate that this is not an issue with which the NRC should be concerning itself. Why is the NRC concerned about this while ignoring the Department of Energy's contractual agreement to provide disposal capacity for and to take title to HLW in 1998?

6. "Could any State or local laws interfere with or

preclude transfer of title or possession of LLW?"

New York State law precludes transfer of title of commercially generated LLRW to the state. See Chapter 368 of the Laws of 1990.

7. "What assurances of the availability of safe and sufficient disposal capacity for LLW should the Commission require and when should it require them? What additional conditions, if any, should the Commission consider in reviewing such assurances?"

The Commission should have thoroughly investigated these questions before it adopted its "not look favorably" policy. If the Commission is going to seriously consider this in the future, it should perhaps seek out assurances similar to those that it has found in the HLW program.

8. "Are there any other specific issues that would complicate the transfer of title and possession, as well as on-site storage, of LLW and mixed waste?"

There are many potentially complicating factors that have not been addressed. These include: the possibility that the LLRWPA will be declared unconstitutional; the possibility that generators may voluntarily decline the option of relinquishing title (in order to comply with state law); the possibility of amendments to the LLRWPA which remove the "take title" provision; and the possibility that various groups of generators may develop their own waste management facilities.

Policy issue paper SECY 90-318 recommends against rulemaking or the adoption of a formal policy. Instead it suggests that letters be sent to the governors of the states, with the same documents the NRC has sent to the states many times before. In the case of New York State, I think it is unlikely that the Governor will be impressed with the NRC's empty gestures. I believe it is obvious that the NRC's policy to "not look favorably" on long-term storage after 1996 will be in effect only as long as it does not hinder power plant operations. Since the State regulates other facilities which generate LLRW, the NRC's policy will have no effect on them. I suggest that a better course of action would be to base future policy decisions on public health, safety, and environmental concerns, and leave the promotion of disposal facility building to others.

Sincerely,

*Patrick M. Snyder*

Patrick M. Snyder  
Special Counsel to Cortland County

cc: Governor Mario Cuomo  
Congressman Sherwood Boehlert

Frank Murray  
Kenneth Carr  
Thomas Combs  
Gene Gleason  
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