

# WOLF CREEK

NUCLEAR OPERATING CORPORATION

Bart D. Withers  
President and  
Chief Executive Officer

February 13, 1991

U. S. Nuclear Regulatory Commission  
ATTN: Document Control Desk  
Mail Station P1-137  
Washington, D. C. 20555

WM 91-0023

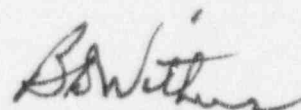
Subject: Comments on SECY-90-318, "Low-Level Radioactive  
Waste Policy Amendments Act Title Transfer and  
Possession Provisions"

Gentlemen:

The purpose of this letter is to transmit Wolf Creek Nuclear Operating Corporation's (WCNOC) comments to SECY-90-318, "Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions."

If you have any questions concerning this matter, please contact me or Mr. H. K. Chernoff of my staff.

Very truly yours,



Bart D. Withers  
President and  
Chief Executive Officer

BDW/aem

Attachment

cc: A. T. Howell (NRC), w/a  
J. E. Kennedy (NRC), w/a  
R. D. Martin (NRC), w/a  
D. V. Pickett (NRC), w/a  
M. E. Skow (NRC), w/a

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COMMENTS ON SECY-90-318

General Comment

The Low-Level Radioactive Waste Policy Amendments Act (LLRWPA) of 1985 made each State responsible for providing disposal capacity for low-level radioactive waste generated within its borders as well as a schedule for the establishment of new disposal capacity nationwide. The title transfer and possession provisions of the LLRWPA provide the primary incentives for states to develop new disposal facilities. Wolf Creek Nuclear Operating Corporation (WCNOC) supports the NRC actions to evaluate the potential regulatory issues associated with state implementation of the title transfer and possession provisions. The Staff's recommendation to provide NRC guidance to the Governors is critical to ensuring that states are fully informed of the federal regulatory requirements and guidelines associated with this issue.

It is recognized that some States or Compacts may not have new disposal facilities operational by 1993 or 1996. This raises many issues concerning interim on-site storage and the potential for long-term on-site storage. WCNOC does not believe that interim storage of low-level radioactive waste (LLRW), whether at a reactor site or a state facility is the solution to the waste disposal problem. All possible actions should be taken to ensure that states honor their responsibilities to provide for permanent disposal. States which are making timely progress toward new disposal facility development yet whose facility will not be open by January 1, 1993 should first pursue continued access disposal options rather than interim storage. Interim storage will be costly and could slow the development of new regional facilities. However, some licensees may have no alternative but to store LLRW on-site.

NRC Question 1:

What factors should the Commission consider in deciding whether to authorize onsite storage of low-level waste (other than storage for a few months to accommodate operational needs such as consolidating shipments or holding for periodic treatment or decay) beyond January 1, 1996?

WCNOC Response 1:

As indicated in the discussion section of the SECY document, this question is specifically referencing storage authorization beyond January 1, 1996. WCNOC does not believe that this date is relevant to any decision by the NRC as to whether or not on-site storage should be allowed. WCNOC does not believe the NRC should take any actions which would create any unnecessary obstacles to generators concerning on-site storage of LLRW. Some licensees may have no alternative but to store LLRW on-site in the event they are denied access to existing facilities.

NRC Question 2:

What are the potential health and safety and environmental impacts of increased reliance on onsite storage of low-level waste?

WCNOC Response 2:

It is not believed that there would be any significant health, safety or environmental impacts associated with utility interim on-site storage of LLRW.

NRC Question 3:

Would low-level waste storage for other than operational needs beyond January 1, 1996, have an adverse impact on the incentive for timely development of permanent disposal capacity?

WCNOC Response 3:

As stated in Response 1, the January 1, 1996 date should not be the key relevant factor in deciding specific storage authorization issues. The addition of any licensee LLRW storage capacity either prior to or after January 1, 1996 can be used by certain individuals to promote storage at existing facilities as the solution to the LLRW disposal issue. The storage issue has the potential to negatively impact the development of regional disposal facilities. NRC actions need to promote timely development of new regional disposal facilities without unnecessarily impacting the ability of generators to implement interim on-site storage if disposal options are not available.

NRC Question 4:

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

WCNOC Response 4:

States will likely challenge the legality of forced title transfer and possession. The LLRWPA of 1985 has been challenged in two federal district courts. In both cases the challenges failed and the courts have established a precedence concerning the constitutionality of the law.

WCNOC is in agreement with the Staff's opinion that additional NRC regulation concerning transfer of title of LLRW to States is not needed. The necessary regulatory framework currently exists.

NRC Question 5:

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

WCNOC Response 5:

The two steps may need to be handled separately. There do not appear to be regulatory issues germane to NRC for the transfer of title to the States. However, specific licensing action from either an agreement State or the NRC would be required prior to a State taking possession of the waste. States cannot take possession of LLRW unless they have the physical capability to do so.

NRC Question 6:

Could any State or local laws interfere with or preclude transfer of title or possession of low-level waste?

WCNOC Response 6:

Undoubtedly state and local laws will be introduced to prevent the title transfer and possession provisions of the LLRWPA. If such laws are passed they would be in conflict with the 1985 Act. In all likelihood these laws would be preempted under the Supremacy Clause of the U.S. Constitution.

The mandatory responsibilities of states which do not develop disposal capability by the January 1, 1993 or January 1, 1996 dates is quite clear concerning transfer of title and possession.

NRC Question 7:

What assurances of the availability of safe and sufficient disposal capacity for low-level waste should the Commission require and when should it require them? What additional conditions, if any, should the Commission consider in reviewing such assurance?

WCNOC Response 7:

The LLRWPA establishes the schedule and potential penalties associated with new disposal facility development. Since the NRC's role is primarily to provide guidance and applicable license review to the States it is not clear what additional assurances could be required without amending the current LLRWPA.

NRC Question 8:

Are there any other specific issues that would complicate the transfer of title and possession, as well as on-site storage, of low-level waste and mixed (radioactive and chemical hazardous) waste?

WCNOC Response 8:

The most sensitive issue will arise if or when generators request their States to take title and possession of LLRW in the event 1993 and/or 1996 milestones are not achieved. Generators could find themselves in delicate political situations. The transfer of title issue would not be as difficult to resolve as the transfer of possession. States cannot take possession of LLRW unless they have a license and the physical capability to do so.

In conclusion, WCNOC supports the NRC's initiatives to address the regulatory implications associated with title transfer and possession as outlined in provisions of the 1985 Act. We cannot over emphasize the fact that the focus of the 1985 Act is to provide for permanent LLRW disposal. Some licensees may have no alternative but to store LLRW on-site as a result of being denied access to existing disposal facilities. We therefore believe the NRC should avoid taking any regulatory actions which could create unnecessary impediments to licensee storage.





COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL RESOURCES

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Harrisburg, Pennsylvania 17120

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The Secretary

February 12, 1991

Mr. James Kennedy  
Office of Nuclear Materials  
Safety and Safe Guards  
Nuclear Regulatory Commission  
Washington, DC 20555

Dear Mr. Kennedy:

**SUBJECT:** Request for Comments on the Nuclear Regulatory Commission's Analysis of Issues Related to Implementing the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985; 55 Fed. Reg. 50064 (December 4, 1990).

This letter responds to your request for comments on the above-referenced matter. Pennsylvania, as host state of the Appalachian States Low-Level Radioactive Waste ("LLRW") Compact, is diligently moving forward with its efforts to develop a regional LLRW disposal facility within Pennsylvania's borders in accordance with provisions set forth in the Radioactive Waste Policy Amendments Act of 1985 and the Appalachian States Low-Level Radioactive Waste Compact Consent Act (Pub. L. 100-319, May 19, 1988, 102 Stat. 471).

The following comments are provided for your consideration prior to implementing the "waste title transfer and possession provisions of the Low-Level Radioactive Waste Policy Amendments Act ("LLRWPA") of 1985:

**Question 1:** "What factors should the Commission consider in deciding whether to authorize on-site storage of LLW (other than storage for a few months to accommodate operational needs such as consolidating shipments or holding for periodic treatment or decay) beyond January 1, 1996?"

**Comment:** Pennsylvania's Department of Environmental Resources (hereafter called the "Department"), believes that evidence of continued good faith efforts by host states toward developing regional LLRW disposal capacity for LLRW should be a determinative factor in deciding whether to authorize LLRW on-site storage of LLRW by generators within the compact region.

The efforts of individual generators of LLRW should also be considered in deciding whether to authorize on-site storage of LLRW. Prior to the implementation of interim LLRW storage, states and compacts will

be developing and implementing interim storage plans which will require significant interactions with the generators of LLRW. These interactions will allow states and compacts to develop a sense of the generators' resolve to cooperate with the efforts of those charged with responsibility for safe interim LLRW management. Any generator lacking the resolve to cooperate could be denied extended storage, perhaps fined, or be required to cease operations that generate LLRW until adequate and safe storage capacity is obtained and such generators comply with the interim waste management authority's requirements.

Training of radiation safety officers ("RSOs") prior to implementing interim LLRW storage capacity should be addressed. The Nuclear Regulatory Commission ("NRC") could require attendance at workshops devoted exclusively to generator responsibilities during interim on-site LLRW storage as a license amendment condition for interim LLRW storage.

Since there are no statutory or regulatory provisions which prohibit storage of LLRW for more than five years, a five-year limitation on such storage requires further technical consideration. Current storage requirements should be adequate to protect the public health and safety for periods well in excess of five years.

**Question 2:** "What are the potential health and safety and environmental impacts of increased reliance on on-site storage of LLW?"

**Comment:** Based on the results of an interim storage LLRW survey of generators in Pennsylvania, the majority of generators responding to the survey indicated that sufficient on-site storage is available for safe interim storage of LLRW resulting in an insignificant impact with regard to health, safety, and the environment. None of the 114 generators of LLRW in Pennsylvania indicated that there will be any adverse health and safety or environmental impacts resulting from on-site storage of LLRW.

**Question 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?"

**Comment:** As host state of the Appalachian States LLRW Compact, interim storage of LLRW would not impact adversely on the "timely development of permanent disposal Capacity" within the borders of the Commonwealth of Pennsylvania. Contrarily, implementation of interim storage guidelines would assist the Department in its efforts to develop such a facility.

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

Comment: Pennsylvania does not anticipate taking possession of LLRW generated within its borders prior to the commencement of operation of the regional LLRW disposal facility. Transfer of title does create the potential for significant liability and economic concerns.

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

Comment: The Governors' Certification provided by Pennsylvania indicates that generators will be directed to store LLRW on-site until a disposal facility is operational in Pennsylvania. Implementation of the title and possession provisions in the LLRWPA in separate steps would ensure that LLRW stored on-site during the interim storage period would remain on-site at generator facilities until such waste is transported for disposal to a regional LLRW disposal facility. Inspection and transportation of the waste prior to commencement of operation of the regional facility would unduly burden state radiation control program staff and would be ineffectual, regardless of the cost.

States which are continuing to make a good faith effort to develop disposal capacity and have demonstrated intent to comply with the requirements of the LLRWPA should be given latitude in dealing with title and possession issues.

Question 6: "Could any state or local laws interfere with or preclude transfer of title or possession of LLW?"

Comment: State laws which have hold-harmless or indemnification provisions may interfere or preclude transfer of title or possession of low-level waste.

Question 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?"

Comment: The Department believes that progress towards issuance of a license to operate a regional LLRW disposal facility is adequate assurance of the availability of safe and sufficient disposal capacity.



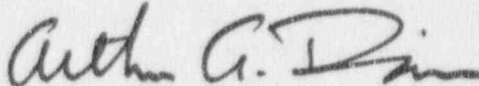
Question 8: "Are there any other specific issues that would complicate the transfer of title and possession, as well as on-site storage, of LLW and mixed waste?"

Comment: As previously discussed, guidance would be necessary if transfer of possession is required. Such an action could have serious consequences on state LLRW programs charged with protecting public health and safety.

Will NRC force a state into a position where it cannot adequately protect the public health and safety even though its compact shows steady progress and intent to comply with the LLRWPA of 1985? If a state refuses to acquire such a license, what mechanism does the NRC have that will compel a state to acquire such license and what are NRC's contingency plans for dealing with such matters?

I trust that the comments provided will assist the NRC in its evaluation of options available for the implementation of LLRW transfer and possession provisions of the LLRWPA of 1985. Clearly, implementation of any of the options elucidated will impact on the Commonwealth of Pennsylvania. Moreover, I believe that the issues raised should be subject to further evaluation. If necessary, William P. Dornsife, Chief of Nuclear Safety can be reached at (717) 787-2163 to further discuss issues related to the above-referenced matter.

Sincerely,



Arthur A. Davis  
Secretary  
Department of Environmental Resources