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February 13, 1991

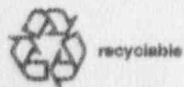
Mr. James Kennedy  
Office of Nuclear Materials  
Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

RE: SECY 90-318 "Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions" (September 12, 1990) and associated request for comment 55 Fed. Reg. 500964 (December 4, 1990)

Dear Mr. Kennedy:

The Illinois Department of Nuclear Safety has reviewed the above-referenced document and *Federal Register* notice. We have also reviewed the associated previous correspondence from the United States Nuclear Regulatory Commission (NRC), Generic Letters 81-38 and 85-14, and Information Notices 89-13 and 90-09 that relate to the topics addressed in SECY 90-318 and *Federal Register* notice. We have the following comments, questions and concerns:

1. We understand from SECY 90-318 that the NRC staff was requested through a staff requirements memorandum dated February 14, 1990, to examine three issues arising from the requirements of the Low-Level Radioactive Waste Policy Act. The tasks assigned were:
  - a) to evaluate the issues raised by the waste title and transfer provisions of the Low-Level Radioactive Waste Policy Act;
  - b) to evaluate the advantages and disadvantages of various conceptual approaches available to NRC for fulfilling any responsibilities it may have in implementing these provisions; and
  - c) develop a schedule for proceeding with the development of necessary regulations or regulatory guidance so that the framework for implementing their provisions would be in place by January 1, 1993.



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Staff response in SECY 90-318 was a two-fold recommendation that:

1. NRC issue a letter to the Governors summarizing NRC's position, regulations and guidance for low-level waste storage as they pertain to the Low-Level Radioactive Waste Policy Amendments Act's 1993 and 1996 deadlines; and
2. NRC follow national progress on the development of new disposal facilities and, if a need is identified, develop NRC safety guidance on longer term storage after consulting with the Commission.

We concur with staff's second recommendation, but it is not clear to us that the first recommendation is responsive to the Commission's request. Nor is it clear that the first recommended action is appropriate.

The staff has apparently based its recommendations on its identification of three issues of concern to the NRC. The first issue is the adequacy of the existing regulatory framework to enable states to take title and possession of low-level radioactive waste. Staff concludes that the existing framework is adequate. Thus, no action on the NRC's part would seem to be the appropriate NRC response to this issue. Second, staff asked whether issuing licenses for storage after 1996 "will remove incentive for States to achieve the permanent disposal objectives of the Low-Level Radioactive Waste Policy Amendments Act of 1985." Our review of that Act failed to disclose any grant of enforcement authority to the NRC regarding the milestones established therein. Presumably, the analysis prepared by the NRC's Office of the General Counsel (Enclosure 1 of SECY 90-318, not provided and "not publicly available") reaches the same conclusion. Therefore, it would appear that this issue would require no action by the NRC either.

The third issue raised by staff is "the period of time for such storage approval." In Generic Letter 81-38, the NRC stated that a license for on-site storage of low-level radioactive waste at nuclear power plants "will be issued for a standard five-year term, renewable if continued need is demonstrated and if safety of continued storage is established" (Generic Letter 81-38, November 10, 1981, page 2). In subsequent correspondence, the NRC stated that "(i)nterim storage of utility license-generated LLW will continue to be considered according to the provisions stated in Generic Letter 81-38 dated November 10, 1981" (Generic Letter 85-14, August 1, 1985, page 3). The issue of length of time for on-site LLW storage licenses is not addressed in the February 8, 1989, NRC Information Notice 89-13 regarding on-site storage. In its February 5, 1990, Information Notice 90-09, the NRC notes that "(i)n the interest of public health and safety, as well as maintaining exposures ALARA (as low as reasonably achievable), the length of time LLW is placed in storage should be kept to a minimum. Accordingly, NRC's approval of requests by materials and fuel cycle licensees for interim extended storage will generally be for a period of time no greater than five years" (NRC Information Notice No. 90-09: Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees, February 5, 1990, page 3). No mention is made of limitations on renewals of these licenses, nor is any basis for treating fuel cycle and materials licensees differently than power plant operators established. In discussing its options, NRC staff considered and purported to

reject the option to issue a policy statement. The Information Notice is not styled as a notice of adoption of a new NRC policy. Therefore it appears that the policy regarding license renewals for on-site storage, first established in Generic Letter 81-38, remained in effect as recently as February 5, 1990. However, the proposed letter to the Governors states that "longer term LLW storage has been discouraged by the Commission in support of national policy" in addition to the health and safety concerns noted. SECY 90-318 states that "(s)torage approvals, needed in 1993, would be authorized for only a single five year period using existing guidance..." [emphasis added] (SECY 90-318, September 12, 1990, page 4).

From our review of the documents it appears that the staff has, in fact, proposed a policy change regarding renewal of licenses for on-site storage of low-level radioactive waste. It further appears that the policy is designed to enforce the provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, specifically, the January 1, 1996, deadline for providing disposal capacity. We therefore request a clarification from the NRC regarding whether the policy expressed in Generic Letter 81-83 that "(a)ny license issued will be for a standard five year term, renewable if continued need is demonstrated and if safety of continued storage is established," remains in effect. If the NRC is indeed implementing a policy change, we suggest that such a change should not be based on a perception by the NRC that it is responsible for enforcing the milestones established by the Low-Level Radioactive Waste Policy Amendments Act of 1985. The mechanism for enforcing those milestones is clearly defined in that Act, and there is no enforcement role for NRC.

Further, given the content of the proposed letter, it seems singularly inappropriate for the NRC to be sending it to the Governors. The NRC is, or should be, very familiar with the organizations and persons within each state that carry the responsibility for implementing that state's responsibilities under the Act. The chief executive officer of a state is unlikely to have any use for such documents as 10 CFR Parts 30, 40 and 70. Certainly the potentially affected licensees and the state agencies responsible for LLW management are able to obtain copies of these regulations. The letter could easily be read as a threat by the NRC to the Governors regarding the January 1, 1996, milestone and is, therefore, highly inappropriate in our view.

Based on the above considerations and concerns, we suggest that the NRC do the following:

1. Confirm that its policy, as expressed in Generic Letter 81-38 and quoted above, remains in effect.
2. Follow national progress on the development of new disposal facilities and, if a need is identified, develop NRC safety guidance, in accordance with staff's recommendation.

If, however, the NRC intends to change its policy regarding on-site storage of low-level radioactive waste, we suggest that it do so through a rulemaking. We suggest that the NRC refer to its recent revision to 10 CFR 51, "Consid-

eration of Environmental Impacts of Temporary Storage of Spent Fuel after Cessation of Reactor Operation," for a procedural model. (In that rule, the NRC concluded that spent reactor fuel can be stored for at least 30 years beyond the operating life of a nuclear power plant, based on its expectation that the Department of Energy will have a high-level radioactive waste repository available for disposal of that waste.)

In its *Federal Register* notice, the NRC asked for comments on eight specific issues. Given our above recommendations, we believe that these eight issues do not require the Commission's consideration at this time. However, by raising some of these issues, the Commission has, by implication and without stating its reasons, rejected staff's assertion that "existing guidance for interim short-term storage by reactor and non-reactor licensees is adequate and the need for additional guidance involving storage for longer, more indefinite periods of time can be addressed as needs are identified." Other of these issues raise matters that, in our view, may not be of concern to the Commission. We, therefore, provide the following comments on the eight issues identified in the December 4, 1990, *Federal Register* notice:

#### ISSUE 1

What factors should the Commission consider in deciding whether to authorize on-site 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?

#### RESPONSE

We do not believe that any public health or safety reason has yet been identified that would require the Commission to consider different factors regarding licensing of on-site storage after January 1, 1996, than are applicable before January 1, 1996.

#### ISSUE 2

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

#### RESPONSE

We suggest that the NRC consider conducting an analysis similar to the one used in support of 10 CFR 51.23 to address this issue. We would appreciate the opportunity to participate in this effort.

#### ISSUE 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?

RESPONSE

We do not believe, based on the documents we have reviewed, that this concern is an appropriate basis for an NRC licensing action. We would appreciate a further explanation of this issue by the Commission.

ISSUE 4

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

RESPONSE

We generally agree with staff's assessment of these issues in SECY 90-318. Further, we suggest that, given the staff's assessment, no action is required by NRC to address these issues.

ISSUE 5

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

RESPONSE

We believe that this issue will be governed by state law. Since the NRC has no identified role in the transfer of title of radioactive materials under the Low-Level Radioactive Waste Policy Amendments Act of 1985, we would question whether the NRC needs to address this issue.

ISSUE 6

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

RESPONSE

Again, we question whether the NRC needs to address this issue. As SECY 90-318 notes, the NRC's existing regulations are adequate, and the NRC cannot change state or local laws.

ISSUE 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?

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RESPONSE

We do not understand what the Commission intends by these questions. Again, we suggest the analysis forming the basis of 10 CFR 51.23 as a possible model for further studies of these issues. This question implies that the Commission has rejected staff's assertion regarding adequacy of existing regulations, but the Commission has failed to express its reasons for doing so.

ISSUE 8

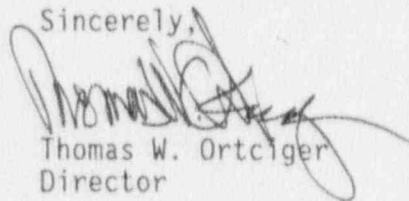
Are there any other specific issues that would complicate the transfer of title and possession, as well as on-site storage of low-level waste and mixed (radioactive and chemical hazardous) waste?

RESPONSE

Among such issues, and within the purview of the NRC, is the issue of regulation of mixed waste. We support and encourage the NRC's efforts to resolve this problem.

Thank you for this opportunity to comment on this matter of significant concern.

Sincerely,



Thomas W. Ortziger  
Director

TWO:vh  
cc: Jerry Griepentrog