

DEC 14 1989

MEMORANDUM FOR: Stuart A. Treby, Assistant General Counsel  
for Rulemaking and Fuel Cycle, OGC

FROM: Richard E. Cunningham, Director  
Division of Industrial and  
Medical Nuclear Safety, NMSS

SUBJECT: ONSITE DISPOSAL AUTHORIZATION IN AGREEMENT STATES

We are requesting OGC's legal opinion as to whether the NRC can authorize onsite disposal under 10 CFR 20.302 for an NRC licensed facility located in an Agreement State. Allied-Signal, Inc., located in the State of Illinois, has requested authorization to bury onsite some contaminated wood pallets. At our request, Allied provided a copy of the application to the State of Illinois. The Illinois Department of Nuclear Safety responded (copy enclosed) by stating that the NRC may not have jurisdiction over Allied's disposal of the pallets. The issue of jurisdiction needs to be clarified. Does the NRC have authority to authorize onsite disposal at the Allied-Signal site even though Illinois is an Agreement State? Your assistance in resolving this question is appreciated.

**Original Signed By**

Richard E. Cunningham, Director  
Division of Industrial and  
Medical Nuclear Safety, NMSS

Enclosure: Ltr dtd 12/4/89

cc: R. Bangart, LLWM

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STATE OF ILLINOIS  
**DEPARTMENT OF NUCLEAR SAFETY**

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(217) 785-9900

TERRY R. LASH  
DIRECTOR

December 4, 1989

RADIOACTIVE MATERIAL LICENSE  
SUB-526  
Jocket No. 40-3392

J. C. Bishop, Plant Manager  
Allied-Signal, Inc.  
P. O. Box 430  
Metropolis, Illinois 62960

Dear Mr. Bishop:

We have reviewed your application to the U.S. Nuclear Regulatory Commission (NRC), dated June 16, 1989, requesting authorization to dispose of radioactively contaminated wooden pallets at Allied-Signal's Metropolis, Illinois, facility pursuant to 10 CFR 20.302(a).

We are concerned about two issues raised by your application. First, Article IX(d) of the Central Midwest Interstate Low-Level Radioactive Waste Compact (CMC) provides that, "unless otherwise authorized by the Commission . . . it is a violation of this Compact: . . . (4) for any person to dispose of waste at a facility other than a regional facility." (Ill. Rev. Stat., ch. 127, par. 63v-1, Art. IX(b)). The CMC Commission has approved out-of-state disposal of low-level radioactive waste until January 1, 1993, but has not approved disposal within the CMC region at any facility other than a regional facility. Because Allied's Metropolis, Illinois, facility has not been designated by the CMC Commission as a regional facility, it would be a violation of the CMC to dispose of this waste at your facility. Therefore, Allied may not dispose of the pallets on-site until either (1) your facility has been designated a regional facility by the CMC Commission, or (2) the CMC Commission has otherwise authorized disposal at your facility.



Second, for other reasons, it may not be proper for the NRC to license on-site disposal of low-level radioactive waste at your facility. The question of jurisdiction over the disposal of wastes by Allied is anomalous and unique. The Department's position is that licensing authority over disposal of low-level radioactive waste anywhere in Illinois rests with the State by virtue of Article I of the Section 274b Agreement with the NRC. Illinois' Agreement State authority with respect to Allied's license is qualified by the NRC's Order of May 14, 1987. Paragraph V.a. of that Order states that:

Notwithstanding the provisions of a Section 274b Agreement with the State of Illinois as approved by the Commission the NRC jurisdiction over the possession and use of source material by Allied Chemical (license SUB-526) shall be retained by the NRC . . . .  
(emphasis added)

The term "disposal" was not included in the Order. Furthermore, nowhere in the Order did the NRC express a need or intent to retain jurisdiction over disposal. Thus, Allied's license appears to be analogous to licenses held by production and utilization facilities.\* That is, while NRC retained jurisdiction over the possession and use of source material by Allied, jurisdiction over disposal has been transferred to the State under the Section 274b Agreement.

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\* See 10 CFR 150.15(a)(1) wherein it is stated that persons in Agreement States are not exempt from the NRC's licensing and regulatory requirements with respect to "the construction and operation of any production or utilization facility." Under this regulation, "operation" of a facility includes, but is not limited to (i) the storage and handling of radioactive wastes at the facility site by the person licensed to operate the facility." Note that the term "disposal" is not included in this section. In its Notice of Proposed Rulemaking entitled "Reasserting NRC's Authority for Approving Onsite Low-Level Waste Disposal in Agreement States," NRC stated that:

(I)n Agreement States, the NRC licenses and regulates only onsite handling and storage of low-level radioactive waste for reactor licensees. Onsite disposal of low-level radioactive waste is regulated by the state regulatory agencies in Agreement States. In Agreement States, the Atomic Energy Commission did not reserve jurisdiction under 10 CFR 150.15(a) for onsite low-level waste disposal at NRC licensed facilities. The Statement of Considerations accompanying that regulation when it was promulgated states that "the states will have control over land burial of low level wastes," and that the Commission decided against "control over land burial of waste" in Agreement States by relinquishing jurisdiction of onsite disposal of low-level wastes to the states while retaining AEC jurisdiction of high-level waste disposal . . . . Under current law Agreement States have the authority to regulate the disposal of low-level waste products onsite. (52 Fed. Reg. 31881, August 22, 1988.)

W. C. Bishop  
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The Department will not initiate a detailed technical review of a permit application until the CMC Commission has authorized on-site disposal at your facility and you have requested approval from the Department. In the meantime, should you have any questions concerning this matter, please contact me at the Division of Radioactive Materials, (217) 785-9935.

Sincerely,



Steven C. Collins, Chief  
Division of Radioactive Materials

SCC:bps

✓ cc: Mr. Leland Rouse, NRC  
Mr. Roland Lickus, NRC Reg. III  
Dr. Clark Bullard, Chairman, CMC  
Dr. Terry R. Lash, CMC  
Mr. Don Hughes, CMC