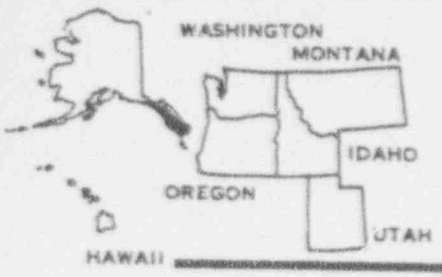

Northwest Interstate Compact
On Low-Level Radioactive
Waste Management

WASHINGTON DEPARTMENT OF ECOLOGY, PV-11 OLYMPIA, WA 98504-8711

February 14, 1991

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

Dear Mr. Kennedy:

The Northwest Interstate Compact Committee, comprised of gubernatorial appointees from Washington, Oregon, Idaho, Montana, Alaska, Utah and Hawaii, is pleased to have the opportunity to respond to your request for comment on the issues associated with the waste title transfer and possession provisions of the Low-Level Radioactive Waste Policy Amendments Act (the Policy Act) of 1985. The Committee also wishes to express its appreciation for the strong and continuing support the Nuclear Regulatory Commission has provided to ensure not only the provisions but also the intent of the Policy Act are forwarded.

The Northwest Compact Committee strongly concurs with the NRC staff position, as set forth in SECY-90-318, that it would be "contrary to the national policy expressed in the LLRWPAA to take actions which could be seen as relieving states from the need to accomplish the overall objective for permanent disposal of low-level waste." Any Nuclear Regulatory Commission action with respect to the waste title and transfer provisions, whether proposed or taken, must not weaken the overall thrust of the act or its carefully constructed incentives and disincentives.

The Committee recognizes there are no statutory prohibitions to storage in excess of five years or beyond 1996. However, the Committee agrees fully with NRC staff that such extended storage could be interpreted as inconsistent with the Policy Act. Consequently the Committee supports, as consistent with national policy, the Commission's statement that it would not look with favor on long term on-site storage after January 1, 1996.

The Northwest Interstate Compact Committee unanimously agrees that the concerned provisions of the Policy Act are essential to its effective implementation. There should be no impression of indecisiveness or lack of resolve on the part of the Commission with regard to enforcing these or other conditions of the Act.

Thank you for the opportunity to comment.

Sincerely,

Terry Husseman

Terry Husseman, Chair
Northwest Interstate Compact

EC/JB

AE22-1 PDR

667

BILL CLINTON
GOVERNOR

Arkansas DEPARTMENT OF HEALTH

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M. JOYCELYN ELDERS, M.D.
DIRECTOR

January 31, 1991

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

Dear Mr. Kennedy:

This letter is in response to RIV 90-81 requesting public comment of the staff analysis of low-level waste issues as presented in SECY 90-318. These documents have been reviewed by the Governor's Low-Level Radioactive Waste Advisory Committee which presents the following comments.

The Committee is of the opinion that any authorization to store low-level radioactive waste for long periods of time beyond January 1, 1996 would undermine the purpose of the deadline imposed by the Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA). Therefore, there is agreement in concept with the staff recommendations in SECY 90-318 that long-term storage beyond January 1, 1996 not be authorized. Nothing must be done to lower the incentives for States and Compacts to comply with the current law in a timely fashion. Health and safety issues may well exist if States do not meet the deadline and must take possession and title of waste for which they are not properly prepared. However, sufficient time exists to avoid this potential without allowing storage of waste for prolonged periods after January 1, 1996.

Responses to the specific questions posed follow:

Question #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: There must be an evaluation of the potential for this kind of storage becoming permanent. There are health and safety issues to be addressed if the state is an Agreement State and is unable to assume regulatory authority. The intent of the imposed deadline must not be weakened.

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Question #2: What are the potential health and safety and environmental impacts of increased reliance on on-site storage of low-level waste?

Response: If the storage area/facility is inadequate in terms of space, control, construction, or siting, the probability of an incident increases. The increased amount of waste as well as the increased number of sites creates additional concerns.

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?

Response: Yes.

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

Response: The issues include the mechanics of the transfer of title and possession; state regulatory matrixes; for Agreement States, staff availability and expertise to license and inspect these facilities; and the issue of liability.

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

Response: Advantages include the possibility of a less complicated transfer mechanism; it may be easier for Agreement States to assume regulatory authority by providing some additional time before the licensure must be completed.

Disadvantages include a potential for some confusion over liability between title transfer and possession if the regulatory authority is not in place; and the potential for the intent of the January 1, 1996 deadline to be weakened by the State effectively delaying taking possession of the waste.

Question #6: Could any State or local laws interfere with or preclude transfer of title or possession of low level waste?

Response: As the potential exists, a review of states to determine those with such laws should be undertaken. Laws could also be enacted to interfere with the process. It would have to be determined to what extent such laws would be held in conflict with Federal law.

Question #7: What assurances of the availability of safe and sufficient disposal 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 assurances?

Response: There must be assurance that the generator has adequately projected waste volumes for the time waste must be managed by the State through self-licensure (Agreement State) or NRC licensure (non-Agreement State). Consideration should be given to not approving any expansion of licensed activities that would generate even more waste. Along this same line, facilities should not be licensed before the deadline that could be expected to increase waste volumes. Consideration should be given to obtaining this information within the next few years.

Other factors the NRC should consider are the previously mentioned state (or NRC) staff ability to license or regulate, the length of time storage is needed and the type, form, and chemical toxicity of the waste.

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?

Response: References have been made to some of the differences that result dependent upon whether a State is an Agreement State or not, likely there are others to be considered. Litigation could cause problems and some potential exists for States to fail to react to the situation facing them. Consideration must also be given to determining if, in the event of a low-level waste generating accident, emergency access to an existing facility will be allowed if a State out-of-compliance with the Act (or that does not have sufficient storage for the accident-produced waste) will be allowed to use an existing disposal facility or must find additional storage.

The Committee appreciates the opportunity to review and comment on this important issue and hopes these comments are useful.

Sincerely,

Greta J. Dicus

Greta J. Dicus, Commissioner
Central Interstate Radioactive
Waste Compact Commission

GJD:jp

cc: Governor's Low-Level Radioactive Waste Advisory Committee
C. Kammerer, Nuclear Regulatory Commission

+R10353/1-3

AE22-1 PDR

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Georgia Department of Natural Resources

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Joe D. Tanner [redacted] Commissioner

Harold F. Reheis, Assistant Director

Environmental Protection Division

January 28, 1991

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

Thank you for the opportunity to comment on the title transfer and possession provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985.

Our staff has reviewed the Low-Level Radioactive Waste Policy Amendments Act of 1985 and information concerning Policy Act. At this time, we have no comments.

Sincerely,

Thomas E. Hill

Thomas E. Hill, Manager
Radioactive Materials program

TEH:ynp

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9102040187 910128
[redacted]
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214
NLXA

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THOMAS W. ORTCIGER
DIRECTOR

JIM EDGAR
GOVERNOR

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?

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. Ortciger
Director

TWO:vh
cc: Jerry Griepentrog

STATE OF MICHIGAN

John Engler, Governor

DEPARTMENT OF PUBLIC HEALTH

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Vernice Davis Anthony, Director

February 28, 1991

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

Dear Mr. Kennedy:

This is to respond to the request from the U. S. Nuclear Regulatory Commission (NRC) for comments on the title transfer and possession provisions of the federal Low-Level Radioactive Waste Policy Amendments Act of 1985, as forwarded to the State Liaison Officers in a letter (with appendices) dated December 6, 1990 from Carlton Kammerer of the NRC.

Enclosed are staff-prepared comments concerning the eight questions raised by the NRC in Appendix A of the December 6, 1990 letter from the NRC.

Should you have any questions concerning these comments, please contact me or my staff in the Division of Radiological Health at (517) 335-8200.

Very truly yours,

Lee E. Jager, P.E., Chief
Bureau of Environmental
and Occupational Health

Enclosure

cc: James F. Cleary, Commissioner
Michigan Low-Level Radioactive Waste Authority

David F. Hales, Director
Michigan Department of Natural Resources

Charles C. Schettler, Jr., Asst. Attorney General
Environmental Protection Division
Department of Attorney General

Roland M. Lickus, Chief
Office of State & Government Affairs
U. S. Nuclear Regulatory Commission, Region III

Michigan Department of Public Health
Bureau of Environmental and Occupational Health
Division of Radiological Health

NRC REQUEST FOR COMMENTS ON LLRW STORAGE AND TITLE AND POSSESSION TRANSFER

On December 28, 1990, we received a copy of a letter dated December 6, 1990, from Carlton Kammerer of the U.S. Nuclear Regulatory Commission (NRC). The letter was distributed to State Liaison Officers (and others) and included two appendices identified as: A. letter to Mr. Jerry Griepentrog, dated November 28, 1990; and, B. Federal Register Notice.

Based upon a staff review of the November 28, 1990 letter from Samuel J. Chilk of the NRC to Jerry Griepentrog (Appendix A), the following comments are offered concerning the public health aspects of the eight specific questions raised by the NRC. Comments are listed in numerical order corresponding to each of the questions identified in the NRC letter.

1. *What factors should the Commission consider in deciding whether to authorize on-site storage of low-level radioactive waste (LLW) beyond January 1, 1996, for purposes other than storage for a few months to accommodate operational needs such as consolidating shipments or holding for periodic treatment or decay?* The NRC should consider existing NRC regulations and guidance on low-level radioactive waste (LLRW) storage, treatment, and disposal and communicate with licensees concerning actions licensees should take. We believe it is especially important for the NRC to consider the storage needs in Michigan as a result of the current lack of access by Michigan generators to an LLRW disposal facility. The NRC may need to consider the provisions of 10 CFR 62 for cases that may potentially become threatening to public health and safety. For periods of interim storage of LLRW by licensees which could extend up to and beyond five years, it is unclear whether existing NRC regulations, guidance documents, and associated inspection and enforcement activities adequately address problems that may impact the protection of public health, safety, and the environment. The NRC should also consider the interests of non-Agreement states in performing inspections of LLRW storage facilities, pursuant to memoranda of understanding with the NRC as provided by Section 274(i) of the Atomic Energy Act.

2. *What are the potential health and safety and environmental impacts of increased reliance on on-site storage of LLW?* The potential health and safety and environmental impacts of increased reliance on on-site storage of LLRW is the main concern we share as a public health agency. We believe the NRC should take the lead to answer this question. The NRC should perform a comparative risk assessment between the two, primary LLRW management options; namely, the

extended storage option and the disposal option. The assessments should include both normal operating conditions and accident scenarios. Both centralized storage and individual generator storage should be included in the assessments. For storage periods longer than those normally considered incidental to shipment, the NRC should assess the extent of potential problems identified in NUREG/CR-4062, "Extended Storage of LLRW: Potential Problem Areas," (December 1985). The results of these assessments could be used by the NRC to provide a basis for additional rulemaking or guidance impacting storage practices.

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?* No comment.

4. *What specific administrative, technical, or legal issues are raised by the requirements for transfer of title?* We decline to comment on the legal issues, but, from a non-legal perspective, we believe that adequate control of the public health protection aspects of stored LLRW at the time of transfer represents a significant issue. Uncertain waste form acceptability criteria, which depend upon the specific requirements of the disposal facility eventually receiving the LLRW, complicate the assurance of adequate control of stored LLRW. Licensing issues, regulatory requirements, and existing guidance are not explicit for extended term storage of LLRW and should be developed by the NRC. At the time of LLRW transfer to a state, technical issues related to transportation logistics represent an additional concern for increased public health risks.

5. *What are the advantages and disadvantages of transfer of title and possession as separate steps?* No comment.

6. *Could any State or local laws interfere with or preclude transfer of title or possession of LLW?* No comment.

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?* No comment.

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 (radioactive and chemical hazardous) waste?* Other issues that could complicate the transfer of title and possession, as well as on-site storage, of LLRW would include the Below Regulatory Concern (BRC) policy of the NRC. Current uncertainty concerning the impact of BRC makes it extremely difficult to assess the extent of LLRW subject to management by states after January 1, 1996. Additionally, we

are aware that some general licensees choose to manage LLRW for eventual disposal in a licensed LLRW disposal facility despite existing waste disposal exemptions that apply to many general licensees. Existing NRC regulations and guidance are inadequate in addressing the management of LLRW by general licensees. The NRC should review the waste management practices of general licensees, initiate rulemaking and/or guidance, and require accountability of LLRW managed by general licensees in order to facilitate proper management and control from a public health perspective by a state agency which may eventually be assigned responsibility following the January 1, 1996 milestone of federal law.

Based on staff discussions with staff of the Michigan Department of Natural Resources (MDNR), another specific issue that could complicate the transfer of title and possession, as well as on-site storage of LLRW, involves the management of the hazardous aspects of mixed waste. Many states have administrative rules which are more stringent than the federal requirements for handling hazardous and mixed wastes. The state of Michigan has siting criteria which must be followed before a facility can store, treat, or dispose of a hazardous or mixed waste. Taking title to and possession of mixed waste without the proper permits would be a violation of state law. For a new facility, or an existing facility without federal interim status under the Resource Conservation and Recovery Act, MDNR staff estimates that it will take approximately 2 1/2 to 3 years to obtain the required construction permit and operating license under the Michigan Hazardous Waste Management Act.

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Jill Lipoti, Ph.D., Assistant Director
Radiation Protection Programs

January 30, 1991

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

Dear Mr. Kennedy:

I would like to take this opportunity to offer our views regarding the Nuclear Regulatory Commission (NRC) Policy Issue SECY-90-318 dated September 12, 1990 and the eight questions posed by the NRC in the December 4, 1990 Federal Register.

Item 1.

The issue that appears most important involves the specific administrative, technical and legal ramifications of the states taking title to and being obligated to take possession of LLRW as required in Section 5 d 2(C) of the Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) (Question #4). In our opinion these ramifications are not adequately addressed by the NRC in the aforementioned policy document.

SECY 90-318 provided clear evidence of the NRC's legal authority to issue license amendments to licensees and licenses to states for temporary storage of Low-Level Radioactive Waste (LLRW) after 1993 or 1996. It is also clear that such extended storage may become necessary in those states which have not developed or acquired disposal capacity by that time. However, the NRC's proposal to issue guidance documents to the states and enforce pertinent parts of 10 CFR regarding storage requirements falls far short of addressing the major concerns. For example, having the authority to issue licenses to states for temporary storage is virtually useless if the states cannot take possession of LLRW because they do not have adequate facilities as required by 10 CFR parts 30.33 and 40.32. It is unlikely that states can develop adequate facilities, such as temporary storage sites, because siting and developing these facilities in a timely fashion would present similar obstacles as are being encountered with the permanent disposal facilities currently under consideration. Even in the event a state is successful in establishing a temporary storage facility, once in place there will be a strong inclination to keep it in operation indefinitely. If this scenario occurs, what avenues

can the NRC pursue against the states should they continue to store beyond what the NRC considers to be an acceptable time limit? Merely denying a license extension will be ineffectual if there is no place available to permanently dispose of the LLRW. Will emergency access become routine?

In light of the above, we would like for the NRC to respond to the following questions and comments:

a. Because it is likely that states will not develop temporary storage sites and therefore be unable to take "possession" as they are "obligated" to do, the majority of "temporary" storage will take place at the sites of generation. This inability by the states to take possession requires that the terms "direct" and "indirect" damages for which states are liable be clarified and the impacts explored. What are the limits of "direct" and "indirect" damages? We suggest that the states' liability be limited to direct waste management tasks and be exempt from any damages attributed to less tenable areas such as poor housekeeping or a loss of business caused by a lack of LLRW storage capacity. Without defining damages, both the state and the generators will be unable to determine exactly what the costs will be for complying with this provision of the LLRWPAA.

b. Could fees be charged to generators to offset the monetary impacts these damages will have on the states? Depending on the associated costs, many states may have to eliminate other important environmental initiatives in order to pay the damages incurred by LLRW generators. Such a scenario will subvert the environmental protection and public safety goals of the LLRWPAA.

c. When title (ownership) is transferred to the state, but the state does not take possession, how will NRC license a facility for radioactive materials the facility no longer owns nor is responsible for? When is title to the waste transferred? Who will be responsible for assuring the provisions in the license are being met? Will the state be required to have personnel assigned to each generator site to ensure compliance with 10 CFR requirements? A rule which requires the states to take title to the waste, but leaves possession and daily management resposibilities with the generator is preferred. Such a rule would simplify adherence to license requirements and ensure that the most knowledgeable personnel are closely monitoring the storage activities.

d. If temporary storage is established at a third party facility not owned by the state, how would this be licensed and who is primarily responsible for the safe keeping of these materials?

e. Many generators have expressed concern that waste forms which were appropriate for disposal at the time the materials were placed in storage, may not be acceptable for disposal

in the planned facilities if such facilities establish waste form requirements which are more strict than those that had been in effect.

The impacts of the title and possession provisions in the LLRWPAA present potentially severe financial and programmatic consequences to the states and deserve further analysis by the NRC. If the NRC wants to provide guidance documents to the states regarding LLRW issues, this is one area that such efforts would be worthwhile.

Item 2

We suggest that the factors the NRC should consider in deciding whether to authorize on-site storage of LLRW beyond 1996 are:

a. Disposal capacity availability

b. Facility capabilities of meeting 10 CFR requirements

c. Economic impacts on both the states and industry

d. Radionuclides and waste forms involved

e. Alternative strategies available

f. Public/employee health and safety

Item 3

The potential health, safety and environmental impacts of increased reliance on on-site storage of LLRW are many. Firstly, the longer the LLRW is in storage at individual generator facilities, the greater the risk of spillage at each facility. Such losses could take place at multiple locations and force costly cleanups on the states. Secondly, in New Jersey many pharmaceutical and biological research industries generate considerable volumes of laboratory animal carcasses which are used in radioactive tracer studies involving Carbon-14 and Tritium. These carcasses tend to decompose over time with a concurrent generation of gases containing significant amounts of radioactivity. Intensive treatment of these materials will be required prior to storage. Thirdly, additional handling of materials due to treatment, e.g. shipment to a treatment facility then return for storage, increases the risk of exposure. Waste forms for the storage period might also be different from those required for permanent disposal thus leading to additional handling and increased exposure.

Item 4

LLRW storage for other than operational needs beyond 1996 will have an adverse impact on incentives to site and develop permanent disposal facilities in a timely fashion. The possibility of storage beyond 1996 allows states and compacts to further delay the disposal facility development process. Extending the storage

deadlines from 1996 to 1998 will create the impression that other deadline extensions are possible. However, if disposal availability is not forthcoming to the states, placing limits on storage timeframes is a moot point. If there is no place for the LLRW to go, what will states be forced to do with it? Shutting down all industries which use radionuclides and produce LLRW will likely prove to be an unsatisfactory response.

Item 5

For reasons described in Issue 1 c, there appears to be a strong case for addressing title and possession provisions separately. Because the development of a centralized, temporary storage facility is unlikely, LLRW will be stored at the site of generation until such time a disposal facility becomes available. This probable scenario will result in the state being unable to take possession of LLRW as it is obligated. Therefore, in our opinion, it is far more worthwhile and realistic for the NRC to develop rules which deal with states taking title and generators retaining possession. Under the title provisions, the state would remain liable for all LLRW management and storage related damages incurred by the generators. The generators would retain possession and be responsible for the proper management, storage and adherence to all license and regulatory requirements related to LLRW. This would result in less confusing and more efficient management of LLRW during the temporary storage period.

Item 6

The New Jersey Constitution of 1947 provides that the functions, powers and duties of all executive instrumentalities of State government are to be allocated by the legislature. See Const. 1947, Art. 5, Sec. 4, Par. 1 and Art. 4, Sec. 1, Par 1. See also Association of New Jersey State Colleges v. Board of Higher Education, 112 N.J. Super. 237 (L.D. 1970). Hence, no instrumentality of the State has any function, power or duty unless the legislature has granted or imposed it. The legislature has not granted to any State instrumentality either the power to acquire, possess or take title to LLRW, or the power to incur liabilities with respect to LLRW. Accordingly, the State of New Jersey does not possess a mechanism to legally take title to or possess LLRW, or to incur liabilities to generators or owners for its failure to possess same.

In addition to the foregoing, the recent State of New York v. United States of America court decision notwithstanding, the State of New Jersey may interpose a constitutional objection to the title and possession requirements imposed by the LLRWPAA, and reserves the right to pursue any other issue pertaining to the title provisions of the LLRWPAA at a later date.

Item 7

The LLRWPAA requires that states/compacts develop disposal

capacity. What would further assurances from the state/compacts do to alleviate impending problems brought about by extended storage? If the states/compacts could make dependable assurances that sufficient disposal capacity exists there would be no reason to explore extended storage. What would the NRC response be if states/compacts could not make such assurances?

Item 8

This item has been adequately addressed in the Item 1 section.

The issues for which the NRC sought comments are complex and substantially impact both the states and their LLRW generators. These issues are so significant that we believe they should be addressed by the NRC through the formal rulemaking process. Attempts to establish the "rules of the game" through policy statements will lack the legal impact that rules provide.

Hopefully we will find solutions to these significant problems. If you have any questions regarding our comments, please contact Mr. Fred Sickels at (609) 987-6367.

Sincerely,

Jill Lipoti, Ph.D., Assistant Director
Radiation Protection Programs

c: Robert Stern, Ph.D., Chief, BER

NEW YORK STATE ENERGY OFFICE

WILLIAM D. COTTER
COMMISSIONER

February 15, 1991

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

Dear Mr. Kennedy:

I am writing in regard to a letter dated February 7, 1991, from this Office to you concerning the Federal Register notice of Tuesday, December 4, 1990 (Vol. 55, No. 233, 50064) entitled Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, seeking comments on SECY 90-318. As a result of clerical error during a period when this office was short-handed because of illness, a preliminary rough draft of comments in response to that notice was inadvertently sent to you as the final response document, in the form of the letter dated February 7, 1991, to you.

Please be advised that the February 7, 1991, letter is hereby withdrawn and should be deemed null and void and of no force or effect. Please discard it from the Commission's files.

Enclosed is a substitute letter dated as of today which comprises our response to the December 4, 1990, Federal Register notice and our comments on SECY 90-318.

Thank you for your assistance in correcting this problem.

Sincerely,

Eugene J. Gleason

Eugene J. Gleason
State Liaison Officer

Enclosure

TWO ROCKEFELLER PLAZA • ALBANY, NEW YORK 12223

NEW YORK STATE ENERGY OFFICE

WILLIAM D. COTTER
COMMISSIONER

073

January 31, 1991

Mr. James Kennedy
Office of Nuclear Materials Safety & Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Kennedy:

This letter is in response to the Federal Register notice of Tuesday, December 4, 1990 (Vol. 55, No. 233, 50064) entitled Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 which seeks comments on SECY 90-318, as well as a host of specific questions related to the storage issue.

New York notes initially that many of the specific questions raised by the notice relate to the provisions of the Federal Low-Level Radioactive Waste Policy Act, as amended (LLRWPA), on forced possession and title transfer after January 1, 1996.

As you are aware, New York is challenging the constitutionality of the LLRWPA and the provisions on forced transfer of title and possession in particular. We believe the law is an unconstitutional intrusion on state sovereignty that represents an unprecedented attempt to impose on the states both the responsibility and liability for an issue that is clearly national in scope. Moreover, New York has a different directive regarding title. Under New York Public Authorities Law 1854-d(6), as amended by Chapter 368 of the Laws of 1990, "[t]itle to any low-level radioactive waste shall at all times remain in the generator of such waste..."

As a result of our legal challenge and the bifurcation, under New York law, of title and possession upon disposal, our views differ significantly from those reflected in the SECY paper. Thus, our remaining comments and responses are made subject to these fundamental differences in New York's legal position and should in no way be taken as conceding or endorsing any contrary assumption in the SECY paper.

The following numbered comments and responses correspond to the numbered questions in Appendix A to SECY-90-318:

(1) New York believes that NRC authority in this area is quite limited. The LLRWPA gave the NRC only very narrow responsibilities expressly set forth in its terms. It did not assign the NRC any general authority for enforcing the LLRWPA. The NRC, of course, retains authority over its licensees under the Atomic Energy Act. In New York, which is an Agreement State, its own regulatory agencies will review applications for regulatory approvals from their licensees on a case-by-case basis, taking into account relevant facts and circumstances. These would include any public health and safety and environmental impacts of longer-term storage at the particular site in question; available alternatives; and the needs of the generators and consequences of disapproval of requested longer-term storage. Consideration should be given to the precedent regarding storage already set by the NRC in currently allowing commercial nuclear power plants to continue to store high-level waste on site indefinitely, with provision being made to transfer that waste from spent fuel pools to dry casks on-site (as well as to other storage sites, also for indefinite storage).

This high-level waste conceivably could remain on site for well beyond the life of the reactor and perhaps longer than the terms of an extended license, certainly well beyond the year 2000, regardless of whether the designated federal agency provides for disposal of such waste by the time Congress has set by law. The NRC should take into account similar considerations in reviewing its licensees' requests for longer-term storage of low-level radioactive waste.

New York has recognized the need for careful evaluation of the feasibility of extended storage of low-level radioactive waste (LLRW), and is in the process of implementing a study to develop the necessary database. In particular, the New York State Energy Research and Development Authority (NYSERDA) has been charged with assessing the present capability of LLRW generators in the State to store waste on-site and their ability to enhance on-site storage capacity to permit storage for a minimum of 10 years. The study also will evaluate the economic viability of establishing a centralized storage facility for Class A medical and academic waste. It should be noted that a critical component of this evaluation will be the exploration of anticipated regulatory requirements and, thus, guidance from the NRC and other cognizant regulatory agencies is essential. As noted above, such NRC guidance would be expected to be consistent and compatible with the NRC's own action taken with respect to indefinite storage of high-level waste regardless of disposal deadlines set for such waste in federal statutes and implementing regulations and contracts.

(2) It is clear that the health, safety and environmental impact of increased on-site storage of LLRW need to be evaluated. Such evaluations are usually addressed on a case-by-case basis and undoubtedly will vary from generator to generator depending on the volume, activity, isotopes and duration involved. The New York State study of extended storage will attempt, through its regulatory analysis, to address these issues. The NRC itself has sponsored research in this area. New York finds it somewhat curious that the NRC would be asking this question. It would seem that the question might be more appropriately asked of the NRC. In any event, some obvious concerns include:

- potential for increased occupational exposure;
- continued reliance on active maintenance to isolate waste from the environment; and
- instability of certain waste forms, such as animal carcasses.

(3) No. The NRC should recognize that many states and compacts are likely to require extended storage to meet their interim management needs. There may, in many cases, be no viable alternative. Again, we do not see that the NRC is responsible for enforcing the provisions of the LLRWPA, anymore than it has assumed responsibility for enforcing the HLW disposal requirements of the Nuclear Waste Policy Act of 1982, as amended. It should, rather, focus its efforts on accommodating the needs of the states and compacts as they strive to meet the mandates of the LLRWPA.

(4) As noted above, New York believes that there are serious constitutional questions regarding the "transfer of title" requirements of the LLRWPA. We are, however, unaware of any associated administrative or technical issues within the NRC's cognizance. To the contrary, we agree that the NRC's existing regulations currently provide adequately for accommodating separately both transfer of title and transfer of possession of LLRW as explained by SECY-90-318.

(5) It appears that the NRC regulations currently provide for, and adequately address, the bifurcation of title and possession of radioactive materials, including LLRW. Other aspects of title and possession will be governed by other federal, state and local laws. As previously indicated, New York law requires title to LLRW be retained by the generator, although possession may pass to some other party (e.g., brokers, disposal facility operators).

(6) New York Public Authorities Law Section 1854-d(6), as amended by Chapter 368 of the Laws of 1990, requires that title to LLRW shall at all times remain with the generator

of the waste.

(7) It would appear that, under its present laws and regulations, the NRC could only require such assurances of its licensees in assessing impacts of storage on public health and safety and the environment. (As noted above, the NRC has not been delegated any authority for enforcing the provisions of the LLRWPA.) In an Agreement State like New York, the cognizant State regulatory agencies will assess the public health and safety and environmental impacts of longer term storage, taking into account information being gathered in the NYSERDA study identified above.

Further, such assurances of disposal availability would apply only to potential future generation of LLRW and would have little meaning for waste which already exists or which is inevitable (e.g., LLRW from the decommissioning of nuclear facilities). In any event, it is not clear what assurances licensees would be able to provide. The NRC addressed a similar question relative to the storage of spent nuclear fuel at nuclear power plants pending the availability of a federal high-level waste repository. In that instance, the NRC conducted a special regulatory proceeding to develop the basis for its decision to allow such storage.

(8) There appear to be many technical and regulatory issues that need to be addressed in considering extended storage of LLRW, whether such storage occurs at the site of generation or at a centralized facility. As noted above, New York State is attempting to address these issues. Among the obvious concerns are: waste form and packaging requirements, and their relationship to ultimate disposal requirements; physical limitations faced by many generators, especially those located in urban settings; the adequacy of regulatory resources to oversee such activity, particularly involving hundreds of distinct generator locations; availability of necessary treatment capability for difficult-to-store waste forms such as animal carcasses; and continued confusion between NRC and EPA over regulatory jurisdictions and requirements affecting mixed waste. The NRC should recognize that many states will be faced with the need to consider long-term storage (beyond five years) as a necessary component of the LLRW management program. It should begin now, not wait as SECY-90-318 suggests, to develop the technical and regulatory guidance that is essential to the informed consideration of such options. Clearly, the NRC has the technical expertise and regulatory background upon which to proceed. It currently licenses long-term possession of high-level waste and radioactive materials at nuclear power plants. It can and should assist states and generators in identifying and evaluating the

health, safety and environmental concerns which they will inevitably face, and which are clearly within the NRC's purview. Furthermore, the NRC must do far more than it has to date to pull "mixed waste" out of the quagmire created by its regulatory differences with EPA. As a result of the federal agencies' failure to address harmonization of their own responsibilities for "mixed waste", no states will be in a position to deal adequately with low-level "mixed waste" within the schedules envisioned by the federal LLRWPA.

New York appreciates the opportunity to provide comments on these matters and looks forward to working with the NRC and other cognizant state and federal bodies in finding a sound solution to the LLRW management problem.

Sincerely,

Eugene J. Gleason by BR

Eugene Gleason
State Liaison
Officer

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PENNSYLVANIA DER

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL RESOURCES
Post Office Box 2063
Harrisburg, Pennsylvania 17120

717-787-2814

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 ("LLRWPAA") 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

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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 statutary 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 guidlines 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 LLRWPAA 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 LLRWPAA 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 LLRWPAA 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 LLRWPAA 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

South Carolina
DHEC
Department of Health and Environmental Control
2600 Bull Street, Columbia, SC 29201

Commissioner: Michael D. Jarrett

Board: John B. Pate, MD, Chairman
William E. Applegate, III, Vice Chairman
John H. Burriss, Secretary

Promoting Health, Protecting the Environment

Toney Graham, Jr., MD
Richard E. Jabbour, DDS
Henry B. Jordan, MD
Curtis B. Spivey, Jr.

January 29, 1991

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

Re: Public Notice, Federal Register
Vol. 55, No. 233, December 4, 1990

Dear Mr. Kennedy:

In regards to the Low-Level Radioactive Waste Policy Amendments Act provisions for states to take title and possession to waste by January 1, 1993, and with penalty by January 1, 1996, the S.C. Department of Health and Environmental Control, Bureau of Radiological Health offers the following comments to the specific questions outlined in the public notice.

The Commission should consider these as responses that will require further research by a state, and may not represent the state's final position.

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?

   The Commission, at minimum, should consider the following in deciding whether to authorize on-site storage:

   a. The types and amounts of waste, and their relevant health and safety consequences.

   b. The availability of storage facilities at different sites and the economic impact on the activity that may be required to develop storage capacity, and the financial ability of the entity to build storage facilities.

   c. All associated environmental statutes e.g. NEPA, local and state laws and ordinances.

   d. Public participation, hearings, forums, etc.

e. Consideration of mandatory waste reduction techniques, and encourage 10 CFR Part 20.201 and below regulatory concern disposals.

f. Consideration to require an activity that produces waste to discontinue its operations, and the socio-economic impact the curtailment of the activity would have.

g. Consider options available to states such as disposal at federal facilities, possible continued operation of existing sites beyond 1992, exportation of waste to other countries under international policy.

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

There are numerous health, safety and environmental impacts that will need to be considered for the increased reliance on on-site storage. These issues have been addressed in NUREG/CR-4062, Extended Storage of Low-Level Radioactive Waste: Potential Problem Areas published by the NRC in December 1985. In addition, the DOE's Technical Coordinating Committee is currently addressing this issue and will have a report prepared in the near future. The most notable issues will be radiation exposure, radiolytic decomposition and gas generation, container degradation, fire potential, and possible release of liquids resulting in groundwater contamination.

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?

We support the contention that low-level waste storage will have an adverse impact on the incentive for timely development of permanent disposal capacity, and that storage of low-level waste should not be allowed for more than five (5) years after January 1, 1993.

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

This state has not had the opportunity to study the specific administrative, technical and legal issues which will be raised by the requirement for transfer of title and possession. Specific legislation may be required by this state in order to legally address this issue. In addition, federal statutes may require amending to give states a better foundation to develop their laws to avoid conflicts

with Interstate Commerce provisions in the Constitution and address liabilities for damages which may incur upon that state.

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

Again, this state has not had an opportunity to study or formulate a position on the advantages and disadvantages of transfer of title and possession. There needs to be further discussion between the NRC and the Agreement States regarding this issue.

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

Although research of state and local laws has not been conducted in this state, there exists a possibility that state or local laws could interfere with or preclude the transfer of title or possession of low-level waste. For economic reasons, court injunctions and lawsuits could be served on the state and regulatory agencies which may have an adverse impact on the transitions.

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?

The Commission should consider all reasonable assurance of the availability of safe and sufficient disposal capacity and closely monitor the compact's or state's progress in this regard. Although milestones were formulated in the Act, the deadlines for actual site development and becoming operational have been delayed significantly. The Commission should require the assurance with realistic schedules before they grant storage authorization to any state as an initial prerequisite. The Commission should particularly use those requirements specified in the Act and require specific evidence as the sited states did in their reviews for milestone compliance.

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?

   Specific issues that would complicate the transfer of title, possession and storage of waste will require further study by this state. However, the resolvement of the mixed waste issue between NRC and EPA would go far to eliminate unnecessary complications.

We appreciate the opportunity to provide our comments. Should you have any questions, please do not hesitate to contact me or Mr. Virgil Autry of my staff at (803) 734-4633, Fax 799-6726.

Very truly yours,

Heyward G. Shealy, Chief
Bureau of Radiological Health

VRA/em

cc: Mr. Vandy Miller, State Agreements Program

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Texas Department of Health

Robert Bernstein, M.D., F.A.C.P.
Commissioner

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Radiation Control
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Robert A. MacLean, M.D.
Deputy Commissioner
Professional Services

Hermas L. Miller
Deputy Commissioner
Management and Administration

January 29, 1991

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:

Staff members of the Bureau of Radiation Control (BRC) have reviewed the document entitled, "Request for Comment on the Title Transfer and Possession Provision of the Low-Level Radioactive Waste Policy Amendments Act of 1985," and offer the following comments:

The Texas Low-Level Radioactive Waste Disposal Authority (TLLRWDA) is a state agency, separate from the Texas Department of Health, charged with the siting, development, and operation of a permanent low-level radioactive waste (LLW) disposal facility. The Texas Department of Health, under the agreement with the Nuclear Regulatory Commission, is the state agency with the authority to license and inspect such a facility. Should a permanent disposal facility for LLW not be available in Texas by January 1, 1996, the TLLRWDA will be the state agency responsible for storage and management of LLW. Therefore, many of the questions posed by the NRC are not applicable to Texas.

Staff members of the BRC agree with the NRC staff position recommending issuance of letters to governors which reiterate the various regulatory and technical considerations associated with the title transfer and possession provisions of the LLRWPAA, with particular emphasis on storage.

In addition, transfer of title and possession must occur simultaneously. The State of Texas will not assume the liability of title while the responsibility of possession remains with another entity.

If you have questions concerning these comments, please contact me.

Yours truly,

David K. Lacker

David K. Lacker, Chief
Bureau of Radiation Control

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State of Vermont

AGENCY OF NATURAL RESOURCES

RADIOACTIVE WASTE MANAGEMENT DIVISION
92 South Main Street
Waterbury, VT 05676

Phone: (802) 244-4525
Fax: (802) 244-4528

23 January 1991

Mr. James Kennedy
Office of Nuclear Materials
Safety & Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

RE: Comment on SECY 90-318

Dear Mr. Kennedy:

The Radioactive Waste Management Division for the State of Vermont hereby offers the following comments to questions one (1) and three (3) of SECY 90-318:

While a blanket extension of the 1 January 1996 deadline would tend to diminish the sense of urgency on the part of the states to develop their permanent disposal capacity, a deadline which proved to be unrealistic might well have the same result.

The potential for injunctive actions against state agencies responsible for constructing disposal facilities for radioactive waste within state boundaries is obvious. The eventuality of multiple actions as part of an organized effort to discourage, delay, and defeat such a plan at every step along the way, is predictable. The appeals process through the judicial system could consume years before a final ruling is rendered.

Therefore, we recommend that allowances be made in the law which would accommodate states that make a good faith effort to comply with the deadline, but, for reasons beyond their control, are unable to do so; and that such a deadline be made contingent upon the final decision of the courts.

Because the course of litigation can vary so greatly from one state or jurisdiction to another, depending upon the intensity and creativity of the opposition, any other approach to enforcing a deadline is untenable.

Sincerely,

William O. Field, Attorney
Radioactive Waste Mgt. Division

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SOUTHERN STATES ENERGY BOARD

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January 30, 1991

Mr. James Kennedy
Mail Stop 5E2
Office of Nuclear Materials Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Re: Request for comments on SECY 90-318

Dear Mr. Kennedy:

The Southern States Energy Board is pleased to provide comments on the title transfer and possession provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) and on the Nuclear Regulatory Commission's staff analysis of those provisions. While the Board's member states possess differing and sometimes opposing viewpoints on handling and disposing low-level radioactive waste, the NRC's staff analysis touches on several concerns common to all southern states.

SSEB wholeheartedly agrees with NRC's position that allowing long-term low-level waste storage onsite for other than operational reasons runs contrary to the intent of the LLRWPAA. Efforts to site permanent low-level radioactive waste disposal facilities have been frustrated since passage of the LLRWPAA. Any action that might lessen the necessity for new capacity, even if such action is deemed to be of a temporary nature, could delay the process even further and hence work against the best interests of the public at large.

The NRC staff outlined four possible approaches that could be used in implementing the title transfer and possession provisions of the LLWPAA. SSEB feels the first option, the amending of 10 CFR Parts 30, 40, and 70 by the NRC, could result in the delay of siting and building new disposal capacity. Imposing a rigid rulemaking process may not be an effective approach to take. A more flexible option would be the issuance of guidance to the governors (approach 2), guidance that could be amended and altered as conditions dictate. While this approach would not result in the formal codification of NRC's position, the relative ease and speed with which the needed actions could be taken outweigh the possible drawbacks such a mechanism could produce.

SSEB has received comments from member states in reference to the specific questions outlined in the notice appearing in the December 4, 1990 issue of the Federal Register. Specifically, states expressed concern about providing input on administrative, technical and legal issues pertaining to title transfer provisions. Some states believe that they have not had the opportunity to examine specific issues in detail. Many complex issues, such as those pertaining to liability, require close attention. Consequently, state and federal regulations may need to be amended. Agreement states and other affected parties must be

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brought together to discuss these and other issues as they arise. Historically, this Board has brought together representatives of its member states and other entities in an effort to resolve conflicts on a regionwide basis in several areas ranging from high-level radioactive waste handling to coastal resources protection. We have found that such an approach can be extremely fruitful in bringing about substantive discussions. We encourage the NRC to use a regional entity to bring together various parties for further discussion.

SSEB appreciates the opportunity to provide comments and we applaud the NRC's efforts thus far in the resolution of these important issues. The Board will continue to follow developments in this area in the future. If I or anyone on the SSEB staff can be of assistance, please feel free to call on us.

Sincerely,

Kenneth J. Nemeth
Executive Director

KJN:awt

cc: Governor Carroll A. Campbell, Jr., South Carolina, SSEB Chairman

Cortland County

Low-Level Radioactive Waste Office

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Telephone (607) 756-3444

Cindy M. Monaco
LLRW Coordinator

Denise Cote-Hopkins
Assistant LLRW Coordinator

January 14, 1991

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

Dear Mr. Kennedy:

Enclosed you will find a copy of a letter to Chairman Carr dated 11 January 1991. This letter is in response to Mr. Carr's earlier correspondence dated 17 December 1990. Because the subject matter in the response pertains to the issues of low-level radioactive waste storage and title transfer, the attached letter is being submitted as part of Cortland County's comments concerning SECY 90-318.

I would appreciate it if you would enter the abovementioned letter into the formal record of comments being received on SECY 90-318.

If you have any questions, please contact me at my office.

Thank you.

Sincerely,

Cindy Monaco

Cindy Monaco
Cortland County LLRW Coordinator

Cortland County

Low-Level Radioactive Waste Office

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Cindy M. Monaco
LLRW Coordinator

Denise Cote-Hopkins
Assistant LLRW Coordinator

January 11, 1991

Kenneth M. Carr
Chairman
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Chairman Carr:

This is in response to your 17 December 1990 letter in which you comment on the Nuclear Regulatory Commission's (NRC's) policies concerning high-level radioactive waste (HLRW) and low-level radioactive waste (LLRW) management. Also, please consider this document to be Cortland County's formal commentary on SECY 90-318.

With regard to the NRC's position concerning HLRW storage, I realize that the NRC committed to conducting a re-evaluation of its 1984 Waste Confidence Decision when it was issued. However, to imply that the impediments encountered in the HLRW siting process did not significantly affect the 1990 decision is disingenuous. The Department of Energy's attempt to develop a HLRW repository has been consistently fraught with problems and has been met with great resistance. To assert that these difficulties were not (and are not) a significant factor in the NRC's "reevaluation" of its HLRW management policy is unconvincing to those in the industry as well as to the public.

Federal register notices (49 FR 34658, 55 FR 38472) demonstrate that the NRC has made considerable adjustments in its HLRW management decisions. In 1979, the NRC was "reasonably assured" that a HLRW repository would be operational by 1998. In 1984, it was "reasonably assured" that such a facility would be operating by 2009. In 1989, the date was moved back to the year 2025. The 1989 Waste Confidence Decision states that: "...supported by the consistency of NRC experience with that of others, the Commission has concluded that spent fuel can be stored safely and without significant environmental impact, in either wet storage or in wet storage followed by dry storage, for at least 100 years." (55 FR 38511)

You state that this policy expresses the NRC's "view on the timing of the availability of an HLW repository." If the implication here is that the NRC's HLRW storage policy has been adjusted to more realistically accommodate delays in the program, be they due to technical or political concerns, I question why the NRC has not made the same considerations in evaluating its LLRW storage policies. You should understand that, if the State of New York were to meet the artificially-conceived time constraints of the LLRWPAA, it would be impossible for a technically competent job to be done. The NRC's inflexible policy against long-term on-site storage, a policy established without technical justification and without public input, could make it impossible for the state to most safely and efficiently develop a comprehensive waste management system.

In your letter, you state that, with respect to LLRW management, the issue is "neither whether it is possible to store LLW safely on-site...nor whether on-site storage is the direction in which the nation should proceed." You assert that the NRC has "implemented a realistic regulatory framework," and you further imply that the NRC's position against long-term on-site storage has been adopted, in effect, to enforce the 1985 LLRW Policy Amendments Act (LLRWPAA).

To begin, given that the NRC is a regulatory agency, its primary concern should be the development of a safe and equitable waste management program. (The NRC should be advising Congress to consider all feasible options and to pursue the most reasonable courses of action with respect to waste management.) Secondly, to attempt to justify what are technically inconsistent policies (that is, the NRC's storage policies concerning HLRW versus LLRW) by pretending to be the enforcing arm of federal legislation is as insulting as it is infuriating.

The NRC has never adequately explained the technical basis for its LLRW management policy; this is because substantive technical limitations to long-term on-site storage of LLRW do not exist. It has also never addressed why it condones allowing the DOE to break its legally binding contracts with generators of spent fuel. According to the 1989 Waste Confidence Decision, "The standard contracts between DOE and generators of spent nuclear fuel ... currently provide that in return for payment to the Nuclear Waste Fund, DOE will dispose of high-level waste and spent fuel no later than January 31, 1998." (55 FR 38480) Yet, in this same document, NRC, after already estimating a HLW repository operational date of 2025, states that it would be "inappropriate for NRC to take any position on the need for

generators ... to provide interim storage for it (HLW and spent fuel) beyond 1998." (55 FR 38480) If the NRC is so quick to condemn long-term on-site storage of LLRW beyond the 1 January 1996 deadline, why is it not willing to condemn interim on-site storage of HLRW after DOE's 31 January 1998 contractual deadline? On what basis does the NRC justify enforcing one piece of legislation, while simultaneously condoning another federal agency's breach of contract? Additionally, allowing for long-term on-site storage after 1 January 1996 is not precluded by the LLRWPAA, and to imply otherwise is inaccurate.

It is evident that an underlying assumption to the NRC's position against long-term on-site storage is that the prohibition of long-term storage at reactor sites will somehow (magically) result in the timely development of disposal facilities. I submit that another more likely scenario exists, and I ask only that you look at the obvious and consider the existing situation in compacts and "go-it-alone" states throughout this country. Clearly, the stage is set for protracted litigation, and it is this, and not NRC policy or federally mandated time lines, that will determine the reality of the nation's LLRW management situation.

I, thus, take strong exception to your claim that the NRC's LLRW regulatory framework is "realistic." In fact, it is anything but realistic; rather, it is completely inapplicable to the situation which has evolved since adoption of the LLRWPAA. Moreover, what will be the NRC's waste management options regarding reactor operations if there are no state/compact facilities available by January 1996 to accept waste? Barring access to existing facilities, the only available options will be to continue storing waste at the point of generation or to shut down the reactors.

I reiterate that refusing to acknowledge a situation will not alter the inevitable. Regardless of what the NRC alleges "should be," the current situation demands additional consideration and a corresponding policy adjustment. Ignoring this reality is akin to putting one's head in the sand, hoping that, by so doing, the problem will disappear. If the NRC refuses to face reality and plan appropriately, it will be forced to make a choice - shut down the reactors or suddenly abandon its long-term on-site storage prohibition and, thereby, because of a lack of adequate planning, possibly create a public health and safety emergency. Which will the NRC choose? The public's perception, based on past history, is that the NRC will do whatever best benefits the nuclear power industry.

If proper provisions are made, long-term storage at reactor sites should not result in significant health, safety, or environmental impacts. The activity of HLRW far exceeds that of LLRW. If, as the NRC asserts, HLRW can be stored on-site safely for 100 years, it is preposterous to imply that LLRW storage at reactor sites raises health or safety issues of any import. In addition, the Bruce Nuclear Power Development's successful on-site storage program, which has been in effect for almost two decades, should alleviate concerns regarding "technical limitations" and, thus, potential negative environmental impacts associated with long-term storage at reactor sites.

With respect to the "take title" issue, SECY 90-318 notes that "Before a State can take possession of the waste, a specific license from either NRC or an Agreement State will be required." I am sure you are aware, however, that it is contrary to New York State law for the state to take title to commercial LLRW. Chapter 368 of the Laws of New York State (1990) affirms quite clearly that "Title to any low-level radioactive waste shall at all times remain in the generator of such waste..." How will the NRC contend with this conflict? Moreover, is the NRC prepared to come to New York State to force the state to apply to take possession and ownership of waste that it does not want? Additionally, if New York State's constitutionality challenge of the LLRWPAA is successful, what impact will this have on the NRC's waste management policies?

One final issue concerns the manner in which the NRC develops its policies. We take strong exception to policies being issued without the benefit of public input. A case in point is the NRC's prohibition against long-term on-site storage after 1995. Now, the NRC has issued for public comment SECY 90-318, which addresses the title transfer and possession provisions of the LLRWPAA. It appears, though, that commentary is also being sought on the NRC's policy against long-term on-site storage. (See questions 1, 2, and 3; November 29, 1990 memo from Samuel J. Chilk, Secretary of the Commission.) One must question why the NRC is seeking public comment on an already established policy. Is the Commission retracting its policy so that it can be re-evaluated in light of comments received. If not, why is public input being requested? Please clarify your position.

If the NRC is interested in establishing credibility with the public, it should begin by considering all reasonable approaches to the waste management issue and not solely those that blatantly support the nuclear industry's interests. Furthermore, at the least, the public, local governments, and other interested parties must be afforded the opportunity for meaningful participation in these

regulatory decisions, which will undoubtedly have a definite and significant impact on their lives.

Sincerely,

Cindy Monaco

Cindy Monaco
Cortland County LLRW Coordinator

cc: Michael Weber
Dr. John Randall
Governor Mario Cuomo
Frank Murray
Dr. Paul Merges
Gene Gleason
Richard Tupper
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January 17, 1991

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

1) LLWM
Need to respond to his earlier letter requesting NRC to review Policy against long-term storage

2) LLWM
SECY-90-318 Hastens the states into becoming the waste handlers for the nuclear power industry

3) OGC, LLWM
NRC should consider Public health Safety and the environment when considering to extend 1996 deadline not desire to expedite disposal capacity

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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.

4 LLWM
NRC should examine the benefits of allowing longer-term on-site storage

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's on-site storage program does not comply with the LLRW Policy Amendments Act (LLRWPAA). 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.

5 LLWM, OGC
NRC has wrongly taken it upon itself to decide if a State's on-site storage plan complies with LLRWPAA

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.

5a LLWM, OGC
NRC should not concern itself with other than Law, Health & Safety issues

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?

7 LLWM
Why is NRC concerned with title or transfer steps when HLW storage will continue until 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 LLRWPAA 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 LLRWPAA 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
Dr. John Randall
Dr. Paul Merges
John Spath
Richard Tupper
Delmar Palm
Cindy Monaco

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Stephen B. Bram
Vice President

Consolidated Edison Company of New York, Inc.
Indian Point Station
Broadway & Bleakley Avenue
Buchanan, NY 10511
Telephone (914) 737-8115

January 30, 1991

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

Re: NRC Request for Public Comment SECY 90-318 Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (55 Federal Register 50064, December 4, 1990)

Dear Mr. Kennedy:

Consolidated Edison Company of New York, Inc. ("Con Edison"), licensee of Indian Point Unit Nos. 1 and 2, welcomes the opportunity to express its views to the Commission on the referenced SECY paper pertaining to the waste title transfer and possession provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985, 42 U.S.C. § 2021b-2021i (the "Act"). For the reasons set forth below, Con Edison believes that the Commission should take an early role in developing the regulatory program required to implement Act objectives regarding State title to and possession of commercial low-level radioactive wastes.

First, the NRC's regulatory program must reflect the Act's provisions that, on and after January 1, 1996, States without permanent disposal capacity are obligated to take title and possession to low-level radioactive wastes generated and held by NRC licensees since January 1, 1993. The Act unambiguously provides that States without permanent disposal capacity by January 1, 1996 shall, upon the request of the generator or owner of the waste, "take title to the waste, be obligated to take possession of the waste, and shall be liable for damages directly or indirectly incurred ... as a consequence of the failure of the State to take possession ... as soon ... as ... the waste is available for shipment." (emphasis supplied).

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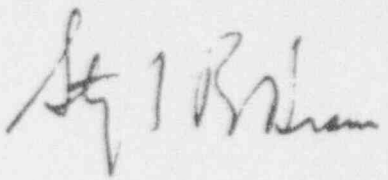
Accordingly, such wastes will legally belong to the State and not to their utility or non-utility generators. As a consequence, NRC is obligated under the Act to look to the respective States for exclusive custodial responsibility for such wastes which devolve to State ownership by operation of law. NRC should therefore develop a regulatory program which provides for the timely assumption of State possession and responsibility for containment, shielding, insurance, and inspection of low-level wastes generated subsequent to December 31, 1992, affirmatively recognizing that, beginning January 1, 1996, in-State generators of such waste will no longer bear any responsibility for these materials.

Moreover, NRC's program should specify that State waste programs do not discriminate on either a cost or storage basis with regard to low-level waste origin. Whether wastes are generated by a utility, a medical center, or a research facility cannot for reasons of fair and equal treatment make any difference in a State's management program. Thus, the NRC's regulatory program should specifically provide that a State program treating utility-generated waste differently than non-utility-generated waste, or discriminating between generators based upon existing waste storage capacity, would not be acceptable.

Additionally, NRC should be aware that certain States have already taken steps intended to interfere with or preclude transfer of title to low-level wastes in a manner inconsistent with the Act. Last July, for example, New York State passed legislation (Chapter 368 of the Laws of 1990) providing that title to low-level waste will remain with the generator even after acceptance of such wastes at an in-State disposal facility. Such legislation directly contravenes the Act and is subject to judicial challenge on federal preemption grounds. Such attempts by States to alter the congressionally mandated structure of the Act in the manner effected by New York would unavoidably compromise State responsibility for low-level waste contrary to federal law. Without explicit NRC requirements to assume possession and title, States will have reduced incentive to timely develop and put into operation a permanent disposal facility. States may also be less inclined to adhere to stringent construction and operational standards at disposal facilities if by legislative enactment ultimate responsibility and liability for waste accidentally released from a site can be passed on to or shared with in-State generators.

Con Edison is pleased to have had this opportunity for comment and looks forward to continued participation in the development of a regulatory program which meets Act requirements.

Very truly yours,



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EDISON ELECTRIC INSTITUTE

LORING E. MILLS
Vice President, Nuclear Activities

January 31, 1991

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

Re: Edison Electric Institute and Utility Nuclear Waste and Transportation Program Comments on SECY 90-318 "Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985" (55 Fed. Reg. 50064 December 4, 1990).

Dear Mr. Kennedy:

Attached are the comments of the Edison Electric Institute (EEI) and the Utility Nuclear Waste and Transportation Program (EEI/UWASTE) on SECY 90-318 ("Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985"). EEI is the association of the nation's investor-owned utilities, which generate 78 percent of all the electricity in the country. EEI/UWASTE is an organization comprised of virtually all of the nation's utilities that operate nuclear power plants. UWASTE seeks to ensure that radioactive waste management and disposal, and nuclear material transportation systems, are maintained and developed in a safe, environmentally sound, publicly acceptable, cost effective, and timely manner. EEI/UWASTE takes the industry lead in addressing regulatory, programmatic, legislative, and litigation matters on behalf of these utilities in the areas of high-level waste, low-level waste, and the transportation of radioactive materials.

In our comments we answer each of the eight questions posed in the Federal Register. To summarize, we feel that the title transfer and possession provisions are a critical element of the national low-level waste program. Low-level waste generators have paid substantial surcharges, have in some cases been denied access, and are bearing the lion's share of facility development costs. The low-level waste Act's title transfer and possession provisions provide the most significant,

direct impetus for the states to develop new disposal capacity. We therefore encourage NRC to address this issue at this time, and to provide guidance to the nation's Governors.

If you have any questions on our comments, please do not hesitate to call.

Sincerely,

Loring E. Mills

Loring E. Mills

LEM/ctf

Attachment

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EDISON ELECTRIC
INSTITUTE

Edison Electric Institute and Utility Nuclear Waste and Transportation Program Comments on SECY 90-318 "Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985" (55 Fed. Reg. 50,064 (December 4, 1990)).

Provided below are the comments of the Edison Electric Institute (EEI) and the Utility Nuclear Waste and Transportation Program (EEI/UWASTE) on SECY 90-318 entitled "Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985." EEI is the association of the nation's investor-owned utilities. EEI/UWASTE is an organization comprised of virtually all of the nation's utilities that operate nuclear power plants. EEI/UWASTE seeks to ensure that radioactive waste management and disposal, and nuclear material transportation systems, are maintained and developed in a safe, environmentally sound, publicly acceptable, cost effective, and timely manner. EEI/UWASTE takes the industry lead in addressing programmatic, technical, regulatory, legislative, and legal matters on behalf of these utilities, in the areas of high-level waste, low-level waste and the transportation of radioactive materials.

Provided below are EEI/UWASTE's responses to the eight specific questions set forth in the Federal Register notice. Before providing those responses, however, we would like to present our general views on SECY 90-318 and on the "title transfer and possession" provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (1985 Act).

The title transfer and possession provisions are a critically important aspect of the program established by the 1985 Act to foster the development of new low-level radioactive waste (LLW) disposal facilities. To date, generators of LLW have paid substantial surcharges, and in some cases been denied access to existing disposal capacity. While encouraging the expeditious development of new disposal facilities, LLW generators have borne the burden associated with the failure of some states to move as swiftly as possible to meet the Act's milestones. In addition, as new disposal facilities are being planned and developed, the generators are in most cases bearing the full costs of facility development, licensing and construction.

The title transfer and possession provisions of the 1985 Act are the most significant, direct impetus placed on the states themselves to develop new disposal capacity. As such, they are a critical element of the overall federal policy which strongly encourages permanent disposal over temporary on-site storage. Responsible federal agencies should take all necessary and appropriate actions to ensure that the title transfer and possession provisions of 1985 Act are fully implemented.

For these reasons, EEI/UWASTE strongly endorses the NRC's decision to consider at this time the potential regulatory issues associated with implementation of the title transfer and possession provisions. In order to effectively implement federal law and policy, it is essential that states are fully informed of the regulatory requirements and guidelines associated with the acceptance of title and possession of LLW. EEI/UWASTE endorses the Staff's recommendation that the Commission provide guidance to the Governors on this subject. A rulemaking or policy statement is not required at this time.

Our responses to the specific questions in the Federal Register notice are set forth below.

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?

EEI/UWASTE RESPONSE:

The factors the NRC should consider in deciding whether to authorize on-site storage are articulated in existing NRC guidance documents such as NRC Generic Letter 81-38 ("Storage of Low-Level Radioactive Wastes at Power Reactor Sites"). It appears that sufficient guidance for on-site storage of LLW has been provided. However, EEI/UWASTE and the Electric Power Research Institute (EPRI) are coordinating on a review of the requirements and guidelines associated with the on-site storage of LLW.

This question specifically inquires about storage authorization "beyond January 1, 1996." (55 Fed. Reg. at p. 50,064). This is, of course, the date established by the 1985 Act by which states must either establish operating disposal facilities or accept title and possession of privately generated waste. While we recognize the significance of that date from the

perspective of the 1985 Act, any decision on whether or not to authorize on-site storage by NRC licensees should be made solely on the basis of whether such storage is consistent with public health and safety. Furthermore, some licensees likely will have no choice but to store LLW on-site as a result of being denied access to existing disposal capacity. NRC should take no action that creates unnecessary impediments to licensee storage.

Finally, explicit NRC authorization of on-site storage would only be required in circumstances where a particular license fails to provide adequate authority for such on-site storage, or where a licensee's evaluation of planned facility changes under 10 CFR § 50.59 identifies a change in technical specifications or an unreviewed safety question. We agree with the statement in SECY 90-318 that "no law or regulation prohibits storage of wastes for periods of time in excess of five years and beyond 1996 . . . ." (SECY 90-318 at p. 5). While the non-binding guidance contained in Generic Letter 81-38 is somewhat unprecise in this regard, as SECY 90-318 recognizes, applicable regulatory requirements governing utility on-site storage are clear.

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

EEI/UWASTE RESPONSE:

There are no significant health, safety or environmental impacts associated with utility on-site storage of LLW in accordance with existing NRC requirements. There is no reason to believe that an increase in utility on-site storage would give rise to any such adverse impacts.

Questions 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?

EEI/UWASTE RESPONSE:

Whether or not on-site storage of LLW beyond January 1, 1996 will adversely impact the timely development of permanent disposal capacity is not clear. While we agree that all appropriate action should be taken to foster and encourage the timely development of new disposal facilities, actions should not be taken which unnecessarily impede the ability of generators to

store LLW on-site under circumstances where other options are not available.

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

EEI/UWASTE RESPONSE:

As a threshold matter, the 1985 Act, and specifically the title transfer and possession provisions, have survived constitutional challenge in two federal district courts. 1/ The position of the courts that have adjudicated these constitutional claims is that the title transfer and possession provisions are validly enacted and viable components of federal law.

In addition, we agree with the NRC Staff's evaluation in SECY 90-318 that existing NRC regulations provide an adequate regulatory framework for transfer of title of LLW to states. (SECY 90-318 at p. 4). Parts 30, 31, 40 and 70 of 10 CFR grant general licenses authorizing any person, including any state, to "own", (i.e., take title to), radioactive materials. In light of these provisions, EEI/UWASTE agrees with the NRC Staff that there "appear to be no significant legal regulatory issues germane to NRC for the transfer of title for LLW to states." (SECY 90-318 at p. 4). Thus, title transfer requires no affirmative licensing action by NRC.

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

EEI/UWASTE RESPONSE:

As discussed above, transfer of title of LLW to states pursuant to the 1985 Act does not require any affirmative licensing action by the NRC, since 10 CFR Parts 30, 31, 40 and 70 grant general licenses to "own" regulated materials. On the other hand, transfer of possession does require affirmative licensing action. Thus, it is useful to consider title transfer and possession as separate steps for purposes of identifying the regulatory actions needed to accomplish the mandate of the 1985 Act.

1/ See New York v. United States, 90-CV-162, slip op. (N.D.N.Y. Dec. 7, 1990); Concerned Citizens of Nebraska v. NRC, CV90-L-70, slip op. (D. Neb. Oct. 18, 1990).

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

EEI/UWASTE RESPONSE:

No state or local laws could legitimately preclude or interfere with the transfer of title and possession of LLW. Although there may be efforts through the promulgation of state or local laws to attempt to interfere with the title transfer provisions, if those laws conflict with the 1985 Act they would be preempted under the supremacy clause of the U.S. Constitution.

Federal preemption in the area of nuclear energy regulation has been considered extensively and recognized by the federal courts. In this context the Supreme Court has held that state law is preempted under the supremacy clause where: (1) Congress defines explicitly the extent to which its enactments preempt state law; or (2) the state law regulates conduct in a field that Congress evidenced an intent to occupy exclusively; or (3) the state law conflicts with federal law or stands as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. 2/ At present the Court has not addressed whether the 1985 Act exclusively "occupies the field" of LLW disposal. However, in a related recent decision, the Ninth Circuit held that a Nevada state statute, making it "unlawful for any person or governmental entity to store high-level radioactive waste in Nevada," had "the actual effect of frustrating Congress' intent" and was therefore preempted by the Nuclear Waste Policy Amendments Act. 3/

Here, similar to Congress' specific guidance and manifest intent in the Nuclear Waste Policy Amendments Act, the 1985 Act sets forth a statutory scheme which explicitly establishes the responsibilities of LLW generators and states with respect to the disposition of LLW prior to and after January 1, 1996. The mandatory responsibilities of states which do not develop disposal facilities in a timely manner is clear and

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2/ See English v. General Elec. Co., 58 U.S.L.W. 4679, 4681 (1990); California Coastal Comm'n v. Granite Rock Co., 480 U.S. 572, 581 (1987); Silkwood v. Kerr-McGee Corp., 464 U.S. 238, 247 (1984); Pacific Gas & Elec. Co. v. State Energy Resources Conservation and Dev. Comm'n, 461 U.S. 190, 203-04 (1983); see also Nevada v. Watkins, 914 F.2d 1545 (9th Cir. 1990).

3/ See Nevada v. Watkins, 914 F.2d at 1560-61.

unequivocal -- they must accept title and possession as of January 1, 1996. They must also pay damages should they fail to meet their clear obligation under the 1985 Act to take possession. Thus, any state or local law which has the effect of restricting, precluding or interfering with the transfer of title or possession of LLW to the states would be in conflict with the 1985 Act and therefore, under current law, preempted. 4/

State laws, however, may possibly affect the procedures by which title to or possession of waste is transferred to the states. EEI/UWASTE generally agrees with the NRC Staff's conclusion in SECY 90-318 that "the legal formality of states taking title to LLW for storage will focus on the laws of the various states pertaining to transfer of ownership of personal property." (SECY 90-318 at p. 4). However, such laws cannot be used to frustrate congressional intent.

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?

EEI/UWASTE RESPONSE:

NRC should not require any specific assurances regarding the availability of LLW disposal capacity. The 1985 Act establishes a carefully crafted framework of penalties and incentives for the development of new disposal facilities. NRC's role under the 1985 Act and other applicable federal law is to review applications for licenses as appropriate and oversee the safety of licensees' storage of LLW.

There is no reason for the NRC to condition any approval of licensee on-site storage on any assurances regarding the availability of disposal capacity. Furthermore, to the extent that a state has applied for a license to store LLW, NRC approval of such an application should not hinge on any such assurances.

4/ In this regard, we note that legislation enacted in the State of New York in July 1989 which purports to prescribe that title to LLW shall "at all times remain in the generator of such waste . . ." appears to clearly be preempted by the 1985 Act. See Chapter 386 of the Laws of New York (1990).

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 [radioactive and chemical hazardous] waste?

EEI/UWASTE RESPONSE:

Mixed low-level radioactive and hazardous waste (mixed waste) is currently subject to full, dual regulation both by EPA under the Resource Conservation and Recovery Act (RCRA) and by NRC under the Atomic Energy Act (AEA). Full, dual regulation of mixed waste will complicate transfer of title and possession, as well as on-site storage of mixed waste.

Under current regulations, persons who handle mixed waste may not be able to avoid becoming "owners or operators of hazardous waste treatment, storage and disposal facilities" and are potentially subject to a host of EPA requirements under 40 CFR Parts 264 and 265. Once states take title and possession of mixed waste in 1996, they may become owners and operators that treat, store, or dispose of hazardous waste under applicable RCRA regulation. States that possess and store mixed waste will not only be subject to NRC regulations, but may have to file complex "Part B" permit applications and comply with extensive EPA technical requirements.

In addition, EPA's Land Disposal Restrictions might be construed to make the storage of certain mixed wastes by states illegal. However, because disposal and treatment capacity in this country is limited, states might have no option but to store these wastes. We have encouraged EPA to clarify that the storage prohibition is not violated if storage is necessitated by the absence of adequate treatment or disposal capacity. Furthermore, we have made a number of specific recommendations to address the unnecessary burdens associated with full, dual regulation of mixed waste including, among other things, development by EPA of a tailored regulatory program which recognizes the protections afforded by existing NRC controls, possible DOE acceptance of commercial mixed waste and establishment of a small quantity generator exemption from RCRA specifically for mixed waste.

EEI/UWASTE appreciates the opportunity to submit our comments on SECY 90-318 and endorses the NRC's decision to consider at this time the regulatory implications associated with implementation of the "title transfer and possession" provisions of the 1985 Act.

E22-1 PDR

084

Entergy Operations

Entergy Operations, Inc.

Gerald W. Muench

January 31, 1991

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

Subject: SECY-90-318 (September 12, 1990) Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions 55 Federal Register 50064 (December 4, 1990)

CNRO-91/00002

Dear Mr. Kennedy:

In accordance with the above referenced notice and invitation to comment, we submit the attached comments on behalf of Entergy Operations, Inc. Our comments focus on those aspects of SECY-90-318 which will have the greatest impact on generators of low-level radioactive waste.

We appreciate this opportunity to express our views on the subject document and encourage the Commission's support in achieving the goal of permanent disposal capability for low-level radioactive waste.

Sincerely,

GWM/swb
attachment

cc: Mr. T. W. Alexion
Mr. S. E. Ebneter
Mr. L. L. Kintner
Mr. Byron Lee, Jr.
Mr. R. D. Martin
Ms. Sheri Peterson
Mr. D. L. Wigginton

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Records Center (GGNS)
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Entergy Operations File (14)
NRC Resident Inspector Office:
Arkansas Nuclear One
Grand Gulf Nuclear Station
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NRC Document Control Desk

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Mr. J. L. Blount, ECH/62
Mr. R. F. Burski, W-3
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Mr. T. E. Reaves, Jr., ECH/64
Mr. N. S. Reynolds
Mr. H. L. Thomas, SMEPA
Mr. J. W. Yelverton, ANO

COMMENTS ON SECY 90-318 "TITLE TRANSFER PROVISIONS OF THE LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985"

GENERAL COMMENT:

The title transfer and possession provisions of the 1985 Act are the only driving force for states to develop new disposal capacity. These provisions are a critical element in the overall federal policy. The responsibility for safe and efficient management of low-level waste disposal is specifically assigned to the states themselves and all necessary and appropriate actions to ensure that these provisions are fully implemented should be taken.

Entergy Operations supports the NRC's decision to consider now the potential regulatory issues associated with implementation of the title transfer and possession provisions. It is essential that states are fully informed of the regulatory requirements and guidelines associated with this issue. Entergy Operations also supports the NRC Staff's recommendation to provide guidance to the Governors on this subject.

Entergy Operations would like to emphasize that interim storage of low-level waste, whether at a reactor site or a state facility, is not the solution to the waste disposal problem. In deed, interim storage will result in significant unnecessary costs and could undermine the entire regional waste disposal facility development process. All possible actions should be taken to ensure that states honor their responsibilities to provide for permanent waste disposal. For those states progressing toward new disposal facility operation, continued disposal options should be pursued rather than interim storage. Developing additional interim storage will be costly and could have significant adverse effects on the regional disposal facility development process.

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

Entergy Operations' Response:

This question specifically inquires about storage authorization beyond January 1, 1996. While we recognize the significance of this date from the perspective of the 1985 Act, we do not believe that this date is relevant to any decision by the NRC whether or not to authorize on-site storage. Some licensees may have no alternative but to store LLRW on-site as a result of being denied access to existing disposal facilities. If existing disposal facilities are not available after January 1, 1993, interim storage, either on or off site, will be a pressing reality long before 1996. We believe that the NRC should not take any actions which create unnecessary impediments to licensee storage.

Question 2: What are the potential health and safety and environmental impacts of increased on-site storage of LLRW?

Entergy Operations' Response:

We believe that there are no significant health, safety or environmental impacts associated with utility on-site storage of LLRW. However, these concerns may exist for storage of non-utility LLRW. Additionally, there are significant financial, technical, and political impacts associated with the storage issue.

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

Entergy Operations' Response:

Again, we do not see the relevance in the January 1, 1996 date. Any additional LLRW storage capacity, before or after January 1, 1996, could be perceived by certain groups, and promoted by these groups, as a solution to LLRW disposal. Past experience indicates that the storage issue can have an adverse impact on regional disposal facility progress. Appropriate actions should be taken to encourage and promote timely development of new disposal facilities without unnecessarily impeding the ability of waste generators to store LLRW if disposal options are not available.

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

Entergy Operations' Response:

The provisions of the 1985 Act have survived constitutional challenge in two federal district courts. Although appeals are possible, the position of the courts has set a precedent as to the constitutionality and validity of these provisions.

We agree with the NRC Staff's evaluation that existing NRC regulations provide the necessary regulatory framework for transfer of title of LLRW to states.

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

Entergy Operations' Response:

It does not appear that any affirmative licensing action by the NRC will be required to transfer title of LLRW to states. Transfer of possession will most likely require some licensing action. Additionally, states cannot take possession of LLRW unless they have the physical capability to do so.

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

Entergy Operations' Response:

In all probability there will be efforts through the introduction of state and local laws to attempt to interfere with the title transfer and possession provisions of the 1985 Act. If these laws do conflict with the 1985 Act they would be preempted under the Supremacy Clause of the U. S. Constitution. The mandatory responsibilities of states which do not develop disposal capability in a timely manner is clear after January 1, 1996. If disposal capacity is not available from January 1, 1993 to January 1, 1996, it is unclear whether the states will incur any liabilities at all. If a state refuses to take title and possession of waste on January 1, 1993 the Act provides for a portion of the 1990-1992 surcharges, plus interest, to be rebated to the generators. This provision only applies to states in non-sited compacts since sited compact generators have payed no surcharges. It does not appear that the rebates will come from the states themselves. After January 1, 1996 states must take title to the waste and are obligated to take possession of the waste. States are liable for all damages incurred by a generator as a result of failure to take possession of waste after January 1, 1996. Unfortunately, damages to generators will occur long before January 1, 1996.

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

Entergy Operations' Response:

The 1985 Act establishes incentives and penalties for the development of new disposal facilities. The NRC's role is to provide guidance and applicable license review. There is no reason for the NRC to consider additional conditions or any assurances regarding the availability of 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 LLRW and mixed (radioactive and chemical hazardous) waste?

Entergy Operations' Response:

Mixed waste is currently subject to dual regulation by EPA under the Resource Conservation and Recovery Act (RCRA) and by NRC under the Atomic Energy Act (AEA). This dual regulation will complicate transfer of title and possession to the states. Mixed waste will also complicate the on-site storage issue.

Under current regulations, persons who handle mixed waste are subject to a

number of EPA requirements as well as NRC regulations. Entities involved with the storage, treatment or disposal of mixed waste may be required to file complex "Part B" permit applications to comply with extensive EPA technical requirements.

Summary Comment:

In addition to any technical issues, there could be political issues relating to the transfer of title and possession of LLRW to the state. The process for transfer of title and possession is initiated by notification, from the generator to the state, in which the generator requests the state to take title and possession of its waste. Generators could be subject to significant political pressure not to file such requests.

In conclusion, Entergy Operations appreciates the opportunity to submit our comments on SECY-90-318. Although we support the NRC's decision to address the regulatory implications associated with "title transfer and possession" provisions of the 1985 Act, we would like to stress that the goal of both the 1980 Act and 1985 Act is to provide for permanent LLRW disposal.

AE22-1 PDR

D85

GULF STATES UTILITIES COMPANY

JAMES C. DEDDENS
Senior Vice President
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(504) 381-4796

January 30, 1991
RBG-34,399
File Code: G9.5.2

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

Dear Gentlemen:

Gulf States Utilities (GSU) is pleased to comment on SECY 90-318 entitled "Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions" (September 12, 1990), which briefs the Commission on issues related to the title transfer and possession provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) and provides the Commission related NRC recommendations.

GSU supports the NRC's decision to consider now the potential regulatory issues associated with implementation of the title and transfer provisions of the LLRWPAA. It is imperative that states are fully informed of regulatory requirements and guidance associated with this issue. GSU also agrees with the NRC's recommendation to provide guidance to the Governors on this subject.

However, GSU emphasizes that the "short-term" interim storage of low-level waste (LLW) is not the solution to this problem. This type of storage will result in significant unnecessary costs and could have potential adverse effects on the regional disposal facility development process. GSU strongly supports that all possible actions should be taken to ensure that states honor their responsibilities to provide for "long-term" permanent waste disposal.

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Furthermore, GSU is concerned with the NRC's recommendation in SECY 90-318 that the Commission "approve the staff plans to continue to utilize existing guidance to authorize storage for a single five-year period beginning in 1993." This recommendation would imply that current NRC guidance, not law or regulation, would be utilized as a required prerequisite to LLW storage beyond 1993 for power reactor licenses. GSU is confident that existing 10 CFR Part 50 licenses contain adequate framework for interim utility storage without additional licensing action. Specific guidance requirements for additional on-site LLW storage can be approved by existing licensees under a 10 CFR 50.59 safety evaluation.

In conclusion, GSU fully supports and endorses the comments of Edison Electric Institute (EEI) - Utility Nuclear Waste and Transportation Program (UWASTE) on this issue. GSU appreciates the opportunity to provide these comments to the NRC.

Sincerely,

J. C. Deddens

WHO/LAE/LLD/KCH

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Maine Yankee
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March 6, 1991
MN-91-25 SEN-91-40

Mr. James Kennedy
Office of Nuclear Materials Safety
& Safeguards
U.S. NUCLEAR REGULATORY COMMISSION
Washington, D.C. 20555

Reference: (a) License No. DPR-36 (Docket No. 50-309)

Subject: SECY-90-318; Recommendations on the Title Transfer Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985. 55 Fed. Reg. 50064 (December 4, 1990).

Dear Mr. Kennedy:

This is in response to the Nuclear Regulatory Commission's ("Commission") request for comments on the above-captioned document. We recognize our comments presented in this letter will arrive after the formal comment period has ended but we hope they will be of some value in any case. Maine Yankee appreciates the efforts of the NRC and its staff to assure the safe storage and disposal of nuclear waste, and also appreciates the complexity of the issues which may arise out of the title transfer provisions of the Low-Level Radioactive Waste Policy Amendments Act. Maine Yankee is grateful for the opportunity to comment on the issues raised in the above-captioned document.

Maine Yankee's comments are limited to the staff's position respecting a five year limit on storage of low-level radioactive waste, stated as follows:

> Consistent with Commission guidance, staff will authorize interim (short-term) storage beyond 1996 based on need while disposal capacity is being developed. Storage approvals, needed in 1993, would be authorized for only a single five-year period using existing guidance, whether at a generator's facility or a state facility. (Emphasis added)

Maine Yankee respectfully suggests that the staff's position should be rejected as inflexible and as having no basis in law. Maine Yankee believes the most appropriate course for the Commission, at this time, would be to take no action other than to continue to regulate licensees and their storage facilities to assure the protection of public health and safety.

As the Commission has recognized, despite best efforts, many states may not have developed disposal capacity of low-level radioactive waste by 1996. The result may be that many generators, nationwide, will be forced to store low-level radioactive waste on site for an undetermined period of time. We do not believe the Commission is charged with enforcing the LLRWPAA. Rather, we believe the Commission's role is

to regulate the storage and disposal of waste on site by power licensees to assure the public health and safety. Moreover, we would note that there is no federal law or regulation prohibiting storage of waste for periods of time in excess of five years, and nothing which limits the Commission's ability to authorize such storage beyond 1996, subject to public health and safety constraints. We do not believe the NRC's overarching health and safety purpose will be enhanced by arbitrary time limits on storage. Further, we believe that a flexible approach by the NRC may help to reduce the proliferation of facilities by giving states additional time to compact or contract with each other, and flexibility is advisable in light of differing circumstances among the states.

Volumes of waste generated and storage capacity differ from state to state. Depending upon the volumes of waste generated and the available storage capacity, it seems prudent for the NRC to maintain the flexibility to treat different circumstances individually. Maine, for instance, is a small generator with a reasonably large amount of storage capacity by its largest generator, Maine Yankee. We believe it would be disproportionately expensive for Maine to develop a disposal facility given Maine's relatively small waste stream. We believe it would make a great deal more sense for Maine to reach an agreement with another state. Given time, we believe the potential exists that Maine will enter into a compact or contract with another state. However, while Maine is continuing in its efforts to develop a compact with another state, it is also continuing (with all deliberate speed) to develop its own disposal facility in the event it is required. Given the small amount of waste and the relatively large storage capacity, long-term storage may not raise public health and safety implications at this time, or in the near (10-15 years) future. The same might not be true for a large state with a large waste stream and relatively small storage capacity. For these reasons, we believe the Commission should avoid arbitrary time limits and maintain the maximum flexibility permitted under the law to react in response to specific factual circumstances and developments.

Maine Yankee urges the Commission to take no action at this time, other than to continue to monitor the states' progress in establishing disposal or storage capacity, and to react in response to developments as they occur on a state-by-state basis. We believe existing guidance for interim storage by reactor licensees is adequate. If additional guidance regarding storage for longer periods of time is necessary, such guidance may be addressed as the needs are identified.

Thank you again for the opportunity to comment.

Very truly yours,

SENichols

S. E. Nichols, Manager
Nuclear Engineering & Licensing

SEN/sjj

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087

NewYork Power Authority

John C. Brons
Executive Vice President
Nuclear Generation

January 31, 1991
JPN-91-006
IPN-91-003

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

SUBJECT: James A. FitzPatrick Nuclear Power Plant
Docket No. 50-333
Indian Point 3 Nuclear Power Plant
Docket No. 50-286
Comments on SECY 90-318, "Low Level Radioactive Waste Policy Amendments Act Title and Possession Provisions"

Dear Sir:

This letter provides the New York Power Authority's comments on SECY 90-318 "Low Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions." The Authority's comments address the questions contained in the Federal Register on December 4, 1990 (55 FR 50064).

The Authority believes that Commission decisions on licensee activities should continue to be based on a determination that such activities can be conducted in accordance with applicable regulations. Therefore, in response to several of the questions contained in the Federal Register, the Authority offers the following comments:

Q1. The Authority agrees with the finding on page 4 of SECY 90-318 that Title 10 Code of Federal Regulations Parts 20, 30 and 50 and NRC guidance documents together provide an adequate regulatory framework for licensing onsite storage. The Authority recommends that the Commission use this existing regulatory framework for decisions related to onsite storage of low level waste.

Specifically, the Commission should consider authorization for storage based solely on reasonable assurance that a licensee can conduct storage activities in compliance with regulations and without endangering the health or safety of the public.

By using the existing regulatory framework, the Commission preserves the ability of each generator licensee to act on and pursue onsite storage according to the licensee's individual capabilities and situation. The Commission should not consider factors other than regulatory compliance when it is considering decisions on licensee actions related to storage.

Q2. Permanent disposal of low level waste in a licensed disposal facility is the most effective means available for isolating the radiological hazard from the environment. However, licensees can conduct storage activities in a manner that will protect public health and present no danger to life and property.

Q3. Storage should not be a substitute for permanent disposal and, further, permanent disposal is technologically achievable within existing licensing standards. However, the regulatory requirements under which storage is licensed and conducted are separate from the provisions of the act under which state and compact authorities are developing disposal capacity. The act imposes no mandate on the Commission to establish permanent disposal facilities. Conversely, if Congress had wanted to preclude onsite storage, whether by directing NRC not to license it or by outright prohibition, that requirement would have been expressly stated in the act. The NRC's mandate is to ensure through licensing and facility oversight that the handling, storage and disposal of radioactive material, in this case low level waste, is performed in a safe and environmentally sound manner. As long as onsite storage meets these criteria, not to license new or continued storage would appear discretionary.

Therefore, although the Commission is responsible under the law for certain activities concerning states and compacts, the Authority believes that the progress of such entities under the law should not become a factor in the Commission's decisions on individual generator licensee actions.

Q8. The Power Authority has applied for interim status for mixed hazardous and radioactive waste under New York State's program authorized by the Environmental Protection Agency. Mixed waste is currently subject to full dual regulation by both the NRC and the EPA, and generators of mixed wastes have no alternative but to store them onsite because commercial disposal capacity does not exist. For these reasons the Authority encourages the Commission to work with the EPA and the Congress to establish a single set of standards for storage, treatment and disposal of mixed waste that will ensure an adequate degree of protection for workers, the public, and the environment.

If you have any questions on our comments, please contact Pete Kokolakis.

Very truly yours,

for John C. Brons
Executive Vice President
Nuclear Generation Department

cc: Regional Administrator
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January 31, 1991

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

Subj: SECY-90-318 (Sept. 12, 1990)
LLRWPAA Title Transfer and Possession Provisions
55 Fed. Reg. 50,064 (Dec. 4, 1990)

Dear Mr. Kennedy:

In accordance with the above-referenced notice and invitation to comment (the Notice), we hereby submit these comments on behalf of Gulf States Utilities Company, Maine Yankee Atomic Power Company, Northeast Utilities, Public Service Electric & Gas Company, and South Carolina Electric & Gas Company. We appreciate this opportunity to express our views on SECY-90-318, Low-Level Radioactive Waste Policy Amendments Act Title Transfer and Possession Provisions (Sept. 12, 1990), which briefs the Commission on issues related to the title transfer and possession provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA) and provides the Commission related NRC Staff recommendations. The Commission was briefed on SECY-90-318 by the Staff on October 29, 1990. At that time, the Commission decided to solicit the views of the public regarding the Staff's recommendations.

Our comments are limited to those aspects of SECY-90-318 which appear to ratify and even expand on attempts to impose requirements or remove authority granted by present licenses without rulemaking or opportunity for adjudication. Specifically, we are concerned with the Staff's recommendation in SECY-90-318 that the Commission "approve the staff plans to continue to utilize existing guidance to authorize storage for a single five-year period beginning in 1993." SECY 90-318 at 7 (emphasis added).

The underscored phrase suggests a Staff position that NRC formal licensing actions, involving, for example, the issuance of license amendments or new licenses, are a prerequisite to LLW storage beyond 1993 by power reactor licensees. If this interpretation of the Staff's intent is accurate, SECY-90-318 would seemingly be in conflict with the requirements of the Atomic Energy Act, 42 U.S.C. § 2011 et seq., and the Administrative Procedure Act, 5 U.S.C. § 551 et seq..

It is our view that power reactor licensees currently have the authority to store LLW at the facility at which it was generated for the duration of the operating license. The onsite storage of LLW produced as a result of the operation of a nuclear power plant is authorized in the Part 50 operating license. The typical license provision authorizing possession of LLW material does not restrict possession to a period of time. The concept of a limit, such as a "5 year limit," for LLW storage is solely rooted in NRC guidance documents, such as generic letters and information notices. It is well established that such guidance documents may not of themselves establish legally binding requirements. Indeed, the Staff acknowledges in SECY-90-318 that there is "no law or regulation [that] prohibits storage of wastes for periods of time in excess of five years . . . ." SECY-90-318 at 5.

Where facility modifications to permit increased storage are necessary, licensees currently are simply required to analyze the technical and safety implications of increased onsite LLW storage and, under appropriate circumstances, may proceed without the need for prior review and approval by the NRC. We are mindful of the NRC Staff's position regarding the need for licensees to perform appropriate technical and safety evaluations in conjunction with planned expansions of existing onsite LLW storage capacity. The Staff's position is primarily set forth in Generic Letter No. 81-38, Storage of Low-Level Radioactive Wastes at Power Reactor Sites (GL 81-38), issued November 10, 1981. The guidance outlined in GL 81-38 references the requirements of 10 C.F.R. § 50.59 which, inter alia, permit a licensee to make facility modifications without prior NRC authorization after making specific findings. GL 81-38 notes that pursuant to the requirements of Section 50.59, the licensee could increase its LLW storage capacity without prior NRC approval if the expansion is not prohibited by its operating license or its technical specifications, and if no unreviewed safety question as defined in Section 50.59 is raised. In accordance with Section 50.59, the licensee must document its Section 50.59 safety evaluation and file a summary thereof with the NRC.[1]

1/ See 10 C.F.R. § 50.71(e).

In our view, GL 81-38 merely points to a change process already provided for in the regulations. Section 50.59 assures appropriate controls are in place to ensure licensee reviews of the technical and safety implications of increased LLW storage, including related facility modifications to provide for such storage. Under most circumstances involving LLW storage, the test of Section 50.59 can be met. Accordingly, no application for a Part 50 license amendment is required and no opportunity for a hearing on the storage plans is required.[2]

GL 81-38 also suggests that any proposed increased storage capacity may not exceed "the generated waste projected for five years." GL 81-38 at 1. The concept of a five year limit, however, is not supported by any provisions in the Atomic Energy Act or NRC's regulations (and GL 81-38 does not offer support for the limit).

In this regard, SECY-90-318 declares that the Staff intends to continue to use the existing regulatory guidance for LLW storage, such as that provided in GL 81-38. However, in suggesting the need for additional licensing "authorization" for licensees to store their own LLW for limited periods, SECY-90-318 can be viewed as an attempt to elevate the legal significance of the existing guidance. For the NRC to treat the "5 year limit" as a legally enforceable requirement at this juncture would have the effect of transforming a Staff position into the legal equivalent of a Commission rule, regulation or order. Moreover, were the NRC Staff to attempt to impose new requirements regarding LLW storage, for example, by virtue of the Commission's action on SECY-90-318, such requirements would have to be subject to the procedures outlined under 10 C.F.R. § 50.109, the backfitting rule.[3]

2/ In this regard, we are aware of no instance in which the Staff has challenged a safety evaluation prepared by a plant licensee that concluded that its prior approval for an increase in LLW storage capacity was not required. Indeed, Chairman Carr observed at the October 29 presentation on SECY-90-318 that the onsite storage of LLW presented few technical or safety concerns.

3/ The justification in SECY-90-318 to require additional licensing authorization for limited periods of storage appears to be linked to concern with the implementation of the title transfer and possession provisions of the LLRWPAA. The Staff acknowledges, however, that "the LLRWPAA does not impose implementation responsibilities on NRC regarding the 1996 deadline . . . ." SECY-90-318 at 4. The NRC's sole mission, therefore, remains the adequate protection of the public health and safety in the operation of commercial

footnote 3 continued on next page

In summary, SECY-90-318 appears to suggest (mistakenly, in our view) that without alteration to the existing regulations or specific licenses, the NRC Staff could require formal licensing approvals and limit such approvals to a period of time (five years or less). It is our view that present operating licenses contain sufficient authority to store any LLW generated at the reactor. Thus, it now appears that the Staff intends to require its prior review and approval of onsite storage of LLW. To that extent, SECY-90-318 is irreconcilable with current regulations, e.g., 10 C.F.R. § 50.59, and existing operating licenses. The "5 year limit" concerning onsite LLW storage, as set forth in GL 81-38, is not a rule, regulation or order and has not undergone 10 C.F.R. § 50.109 procedures, and is therefore not an enforceable regulatory requirement.

Sincerely yours,

Robert E. Helfrich

Mark J. Wetterhahn
Robert E. Helfrich
James W. Moeller

WINSTON & STRAWN

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footnote 3 continued from previous page
nuclear power plants. It should not now go beyond this mission, in the pursuit of objectives for which other government entities are responsible.

AE22-1 PDR

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

P.O. Box 411 / Burlington, KS 66839 / Phone: (316) 364-8831

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ADD: L Person

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COMMENTS ON SECY-90-318

General Comment

The Low-Level Radioactive Waste Policy Amendments Act (LLRWPAA) 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 LLRWPAA 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 LLRWPAA 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 LLRWPAA. 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 LLRWPAA establishes the schedule and potential penalties associated with new disposal facility development. Since the NRC's role is primarily to provide guidance an.. applicable license review to the States it is not clear what additional assurances could be required without amending the current LLRWPAA.

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.

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CINTICHEM, INC.
P.O. BOX 816
TUXEDO, NEW YORK 10987 (914) 351-2131

February 4, 1991

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

Dear Mr. Kennedy:

SUBJECT: Request for Comment Regarding NRC SECY 90-318 in FR Vol. 55 No. 233, December 4, 1990

Cintichem is currently planning to decommission its nuclear research reactor and radiochemical processing facilities in Tuxedo, New York. This decommissioning process will generate low level waste that will require continued access to disposal facilities in order to successfully complete this decommissioning project.

Cintichem is pleased to present comments on the subject Federal Register Notice regarding the title transfer provisions of the Low Level Radioactive Waste Policy Amendment Act of 1985 (The Act). We wish to underscore the importance of the Commission's anticipation of the implementation of the "take-title" provision of the Act primarily to avoid or reconcile complications that may interfere with this process. It is imperative that the safe and effective management of low level waste continue throughout the mandated transition in the Act, otherwise the common good that is derived from the many and diverse enterprises using nuclear technology will be jeopardized.

The Commission should emphatically encourage States to adhere to the schedule defined in the Act for developing waste management and disposal capabilities. The staff proposal to issue a letter by the Commissioner offering guidance for adhering to this schedule is appropriate at this time.

It is apparent at this time that many States or Compacts will have to rely on interim storage of low level waste beyond January 1, 1993. It is also likely that New York and other States will be required to store waste beyond the January 1, 1996 deadline for the title transfer provision of the Act. At this time the date for having an operational waste disposal facility in the State of New York is not well defined and there may be a requirement for interim waste storage beyond the currently planned 5 year period beginning January 1993 (i.e. beyond 1998).

JJM/24.91B

The NRC plan to issue licenses for interim storage for 5 years should be reexamined in light of the current and projected status of the States' preparedness to accept waste for permanent disposition. Perhaps storage licenses of indefinite terms with surveillance and remediation requirements would be more appropriate. Anticipating the need for longer storage terms now may avoid the need for extraordinary measures in the future. The provision for indefinite storage may tend to discourage adherence to the mandated milestones in the Act but we believe that the financial penalties provided in the Act for States that miss the January 1996 deadline outweigh any implied relief from the allowance for an indefinite storage term.

The current guidance for interim storage should be coupled with an effective surveillance and remediation program thereby effectively assuring safety and integrity of the stored LLW. The added cost of the surveillance and remediation would likely be included in the financial liability to be assumed by the States as mandated by the Act.

The title transfer provision of the Act may lead to complications if a State is not ready to take physical possession after January 1, 1996. Title and responsibility will pass to a State while the waste remains on the premises of the generators. Assuming that continued management of the waste in storage will be necessary, arrangements regarding use of the generators' facilities for storage, movement of the waste to State owned or operated facilities, personal and property liability, transfer of licenses, and other issues will have to be addressed in advance of January 1, 1996. If only title passes and the waste remains in the possession of the generator, who will manage the conditions of storage? It is assumed that, if the waste is not moved, lease agreements will be required for a State to occupy the storage space, and generators may act as contractors of States to manage the storage. States will have to anticipate the refusal of or inability of generators to continue storing waste. At this time, the possible complications seem to be countless. These can be managed provided sufficient preparation is allowed between generators and States. Guidance for implementation of all possible options should be promulgated well in advance of January 1996.

The Cintichem facility will be very close to having all radioactive material off site by January 1993. Denial of access to disposal facilities at this time would prevent the completion of the decommissioning project. Substantial resources would have been expended in an effort to return the facility to productive use. Interrupting the decommissioning process near the end of the project could be compromising monetarily and environmentally. In cases like this, the NRC should consider allowing continued access under some emergency provisions.

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The question of conflicting State and Federal laws regarding title transfer has already been raised. A recent decision by U. S. District Judge Cholakis dismissed Governor Cuomo's challenge to the provision of the Act requiring States to manage LLW by January 1993 and it reinforced the "take-title" provision. If this decision prevails in any appeal that may ensue, any State or local law that is in conflict with this provision of the Act will be preempted by the Act. The NRC must presume that the provisions of the Act will prevail and it must continue to emphatically encourage States to maintain compliance and to regulate States' compliance as appropriate.

The development and initial operation of low level waste disposal facilities has evolved into a process that takes several years to accomplish under ideal technical, social and political conditions. It is apparent now that few States or compacts will be able to manage its indigent waste by January 1, 1993. The Commission should use whatever authority it has under the Atomic Energy Act and its Amendments to obtain the assurance it needs that the general health and welfare of the public will be maintained and protected with regard to the proper and safe management and disposal of low level radioactive waste. This assurance should not be limited to the consequences of insufficient or makeshift waste management programs but it should assume a broader view of the risks to the general health and welfare of the public if the benefits that are derived from the many valuable uses of nuclear technology are adversely affected.

Very truly yours,

J. J. McGovern
President/Plant Manager

JJMcG/bjc

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DUPONT

E.I. DU PONT DE NEMOURS & CO. (INC.)
MEDICAL PRODUCTS DEPARTMENT

January 30, 1991

Office of Nuclear Materials Safety and Safeguards
US NRC
Washington, D.C. 10555

Atention: James Kennedy

Subject: Federal Register/Vol. 55 No. 233/Tuesday, December 4, 1990/
Recommendations on the Title Transfer Provisions of the
Low-Level Radioactive Waste Policy Amendments Act of 1985

On behalf of the Greater Boston Area Manufacturing Division, Medical Products Department, E.I. DuPont de Nemours and Company and the Dupont-Merck Pharmaceutical Company we are pleased to submit the enclosed comments to the above-referenced subject.

The DuPont Greater Boston Area Manufacturing Division is a major supplier of radioactive materials for biomedical and industrial research applications. The DuPont Merck Pharmaceutical Company is a mjaor manufacturer of radio pharmaceuticals for nuclear medicine applications.

We are concerned that the implementation of title provisions of the Low-Level Radioactive Waste Policy Amendments Act ("LLRWPAA") of 1985 does not in itself assure the degree of control and optimization of safety that we consider necessary in managing low level radioactive waste. We recommend that in addition to implementing the provisions of the 1985 Act that the US NRC reconsider the need for a federally controlled, centralized waste storage and disposal capacity as an alternative provision or as a contingency in the event of failure of other waste storage and disposal plans.

We appreciate the opportunity to comment on the issues of ownership and management of low-level radioactive waste.

Yours sincerely,

L. R. Smith

L. R. Smith
Radiation Protection Consultant
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Dupont
575 Albany Street
Boston, MA

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MEDICAL PRODUCTS DEPARTMENT
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GENERAL COMMENTS ON RECOMMENDATIONS ON THE TITLE TRANSFER PROVISIONS OF THE LOW LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985

1. Greater than 95 percent of the radioactive material used in the manufacture of research chemicals becomes low level radioactive waste (LLW). Similarly a large fraction of radioactive material used to manufacture radiopharceuticals becomes waste including long lived radionuclides unavoiadably generated during the primary irradiation operations. In the USA the majority of this waste is generated by a few licensees who are manufacturers. The advantage of this system is that these licensees can employ economies of scale and focus essential technical expertise to optimize the safe and cost effective management of this waste. This together with the availability of safe disposal facilities ensures that vital biomedical research and nuclear medicine facilities are sustained for the benefit of our society.

2. We are encouraged that the US NRC is considering further steps to implement the requirements of the LLRWPAA. We are, however, concerned that the current direction of this process may lead to the proliferation of numerous short term or long term waste storage and disposal sites ir less than optimum locations with less than optimum resources available for their safe management.

3. The LLRWPAA was based on experienced gained during the 1960s and 1970s when low-level waste generation was increasing and expected to continue increasing. During the past decade the US NRC has successfully encouraged licensees to reduce their waste and new technologies promise even further reductions in waste volume. The best way to manage this waste is to dispose it in a centralized facility provided with optimum resources to assure safety for the public. This is the way it is done in other developed countries. We already have such facilities.

4. We strongly urge that the time is right for the US NRC to reevaluate waste generation practice and trends and prepare for an alternative program that would provide for centralized national waste storage and disposal.

5. While we believe the reconsideration of centralized disposal for LLW to be vitaly important we are not suggesting that the US NRC should discontinue implementation of the LLRWPAA. Instead, we urge that both programs should be pursued until it becomes clear that one is redundant and can be dropped.

SPECIFIC COMMENTS ON RECOMMENDATIONS ON THE TITLE TRANSFER PROVISIONS OF THE LOW LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985

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

   The US NRC should consider the following factors:

   a. Availability of resources for continuous monitoring of the stored waste.

   b. Availability of regulatory inspectors.

   c. Clarification of authorizations for 5 or 10 year storage. Mixed waste and orphan waste currently not permitted at burial sites has already been stored for at least 5 years. When does the clock start?

   d. Licensees currently put waste in a stable form prior to disposal. Licensees cannot anticipate what waste forms will be acceptable in 5 or 10 years time. If licenseees stabilize their waste prior to storage this waste may need to be reprocessed, or in situations where the waste process is irreversible the licensee may have to permanently store the waste.

   e. Alternatively, licensees may be forced to store waste in an unprocessed form until ultimate disposal requirements are defined. This could incur prohibitive costs to engineer effective containment to ensure the same level of safety to the public as stabilized processed waste.

   f. Any increase in waste costs and an economic downturn could be expected to cause some licensees to become bankrupt. There needs to be additional provisions to ensure that bankruptcies do not lead to a loss of control that could affect the public safety.

   g. Licensee decommissioning plans include the provision of surety funds based, in part, on the anticipated cost of waste generated during decommissioning. What are the financial and regulatory provisions for waste stored on site from previous operations and what are the provisions for both stored and decommissioning waste in the event of a disposal site not being available?

   k. DuPont meets regularly with local residents as part of its good neighbor policy. At most of these meetings neighbors express concern that we may be increasing the storage of waste. There is a need for the US NRC to include the incorporation of incentives to local residents in getting public acceptance of waste storage and disposal.

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

   The reason why we pay large sums to ship LLW to a disposal site is

because this is considered to be a safer method. Forcing excessive storage time in less than optimum locations can be expected to increase the potential for accidents. This would be of particiular concern for universities and hospitals located at urban facilities which are cramped and archaic and may have already reached their storage capacity.

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

We believe that taking title is meaningless unless that also includes possession.

4. "... other specific issues that would complicate transfer of title and possession ...."

a. There is a need to address mixed waste, orphan waste and NARM waste.

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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.

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 accomodate 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

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 respository. Second, NRC should be attuned to the possibility of innovative evasions such as the eminent domain ploy descried 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

DAB/dw

Nuclear Storage Systems Inc.

January 30, 1991
P09310.00
US-06.01

Mr. James Kennedy
Office of Nuclear Materials Safety
USNRC
Washington, DC 20555

Dear Mr. Kennedy:

Please send me a copy of "Low-Level Radioactive Waste Policy Amendments Act" Title Transfer and Possession Provisions" (SECY 90-318).

Our firm has considerable expertise in storage of LLRW and we would like to receive any information you may issue on this subject.

Thank you.

Yours very truly,

Harold Tammemagi

HYT:ljr

H. Y. Tammemagi, Ph.D.
Senior Partner

P.O. Box 228 Amherst, NY 14226-0228
716-689-8429

ACURI ASSOCIATION
Appalachian Compact Users of Radioactive Isotopes
Barbara Building, Suite B, 820 North University Drive, University Park, PA 16802 Telephone: 814-863-2133 or 1-800-321-6789 Fax: 814-863-2347

February 28, 1991

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

Dear Mr. Kennedy:

On December 11, 1990 in the Federal Register, the NRC requested public concerns on Staff Analysis of Low-Level Waste Issues.

The ACURI Association, Inc. is made up of users of radioactive isotopes and generators of low-level radioactive waste within the Appalachian States Compact including the states of Delaware, Maryland, Pennsylvania, and West Virginia. The members of the Association hold either a license or permit by the NRC or the Compact states. Our members include academic, government, industry, medical, research, suppliers, utilities, and waste handlers. Our response to the specific questions in the Federal Register notice are set forth below.

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?

ACURI RESPONSE: Before responding to the first question, ACURI wishes to state clear distinctions in terminology that will be employed in its responses to this and other questions herein. ACURI regards the ". . . few months. . .operational needs. . ." on-site storage referred to in the above question as being "short-term". ACURI labels the ". . .on-site storage. . .beyond January 1, 1996?" as contemplating interim storage pending the realistic, near-term availability of permanent off-site disposal facilities. This labeling distinction is made to clearly preclude giving any impression that ACURI interprets the questions or intends its responses thereto as sanctioning or condoning ". . .on-site storage. . .beyond January 1, 1996?" as being in lieu of use of permanent, off-site disposal facilities. ACURI believes this labeling distinction is consistent with use of the word "interim" in the NRC IN 90-09 letter referred to later in this response.

It is the opinion of the ACURI organization that the factors the NRC should consider in deciding whether to authorize interim on-site storage revolve around the availability of off-site disposal capacity and are covered in existing NRC guidance documents such as NRC's letter IN 90-09 "Information Needed In An Amendment Request To Authorize Extended Interim Storage Of Low-level Radioactive Waste". It appears that sufficient guidance for interim on-site storage of LLW has been provided. The ACURI organization will continue to review the requirements and guidelines associated with the on-site storage of LLW as they are being applied through the agreement state members of the Appalachian Compact. We would welcome the opportunity to communicate with the NRC should our position on this matter change.

ACURI recognizes the importance of the January 1, 1996 date within the 1985 Act. However, any decision on whether or not to authorize interim on-site storage by NRC licensees should be made solely on the basis of whether such storage is consistent with public health and safety. Furthermore, some licensees likely will have no choice but to store LLW on-site on an interim basis as a result of being denied access to existing disposal capacity. We believe NRC should take no action at this time which might create unnecessary impediments to licensee storage. In addition, the NRC should make no changes or give no indication of changes, which would in any way lessen the importance of Compact compliance with the January 1996 milestone.

Question 2:

What are the potential health and safety and environmental impacts of increased on-site storage of LLW?

ACURI RESPONSE: It is the opinion of the ACURI organization that there should be no significant health, safety or environmental impacts associated with interim on-site storage of LLW in accordance with existing NRC requirements. Therefore, there is no reason to believe that an increase in such interim on-site storage would give rise to any additional adverse impacts. However, ACURI believes that storage of biological waste from medical research may present special challenges for interim storage facilities.

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?

ACURI RESPONSE: It is not clear to us that interim on-site storage of LLW beyond January 1, 1996 will adversely impact the timely development of permanent disposal capacity. ACURI agrees that all appropriate action

should be taken to promote and encourage the timely development of Compact disposal facilities, actions should not be taken which might unnecessarily impede the ability of generators to store LLW on-site under circumstances where other options are not available.

Question 4:

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

ACURI RESPONSE: We, at ACURI, agree with the NRC Staff's evaluation in SEC 90-318 that existing NRC regulations provide an adequate regulatory framework for transfer of title of LLW to states. It is our understanding that SEC 90-318 at p. 4; Parts 30, 31, 40 and 70 of 10 CFR grant general licenses authorizing any person, including any state, to take title to radioactive materials. ACURI agrees with the NRC Staff that there "appear to be no significant legal regulatory issues germane to NRC for the transfer of title for LLW to states." Therefore, title transfer requires no affirmative licensing action by NRC.

Question 5:

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

ACURI RESPONSE: It is our understanding that the transfer of title of LLW to states pursuant to the 1985 Act does not require any affirmative licensing action by the NRC, since 10 CFR Parts 30, 31, 40 and 70 grant general licenses to "own" regulated materials. However, since the transfer of possession would require affirmative licensing action, ACURI believes that the issues of transfer of title and the transfer of possession should be treated as separate steps for purposes of identifying the regulatory actions needed to accomplish the mandate of the 1985 Act.

Question 6:

Could any State or local laws interfere with or preclude transfer of title or possession of LLW?

ACURI RESPONSE: Although there may be efforts through the promulgation of state or local laws which will attempt to interfere with the title transfer provisions, if those laws conflict with the 1985 Act they would be preempted under the supremacy clause of the U.S. Constitution.

It is our understanding the 1985 Act, sets forth a statutory scheme which explicitly establishes the responsibilities of LLW generators and states with respect to the disposition of LLW prior to and after January 1, 1996. According to the Act, states which do not develop disposal facilities in a timely manner must accept title and possession as of January 1, 1996.

Thus, any state or local law which has the effect of restricting, precluding or interfering with the transfer of title or possession of LLW to the states would be in conflict with the 1985 Act and thus preempted.

State laws or regulations may however, possibly affect the procedures by which title to or possession of waste is transferred to the states. ACURI generally agrees with the NRC Staff's conclusion in SEC 90-318 that from the legal procedural standpoint, "the legal formality of states taking title to LLW for storage will focus on the laws of the various states pertaining to transfer of ownership of personal property."

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?

ACURI RESPONSE: We believe that is not appropriate for the NRC to require any specific assurances regarding the availability of LLW disposal capacity at this time. The 1985 Act establishes a carefully crafted framework of penalties and incentives for the development of new disposal facilities. It is our opinion that the NRC's role under the 1985 Act and other applicable federal law is to review applications for licenses as appropriate and oversee the safety of licensees' storage of LLW.

We do not believe the NRC should condition any approval of licensee on-site storage on any assurances regarding the availability of 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 [radioactive and chemical hazardous] waste?

ACURI RESPONSE: Mixed low-level radioactive and hazardous waste (mixed waste) is currently subject to full, dual regulation both by EPA under the Resources Conservation and Recovery Act (RCRA) and by NRC under the Atomic Energy Act (AEA). Full, dual regulation of mixed waste will complicate transfer of title and possession, as well as on-site storage of mixed waste.

We are concerned that under current regulations, persons who handle mixed waste will not be able to avoid becoming "owners or operators of hazardous waste treatment, storage and disposal facilities" and are potentially subject to EPA requirements under 40 CFR Parts 264 and 265. Once states take title and possession of mixed waste in 1996, they may

become owners and operators that treat, store, or dispose of hazardous waste under applicable RCRA regulations. In addition, EPA's Land Disposal Restrictions might be construed to make the storage of certain mixed wastes by states illegal. However, because disposal and treatment capacity in this country is limited, states as well as generators might have no option but to store these wastes. We encourage EPA to clarify that the storage prohibition is not violated if storage is necessitated by the absence of adequate treatment or disposal capacity.

ACURI appreciates the opportunity to submit our comments on SEC 90-318 and endorses the NRC's decision to consider at this time the regulatory implications associated with implementation of the "title transfer and possession" provisions of the 1985 Act.

We again strongly emphasize the importance of adherence to the 1985 Act milestones and concerted implementation of Compact legislation as they pertain to the timely completion of a permanent, off-site disposal facility.

Sincerely,

Stephen T. Slack

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ACURI Chair

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