

MEMORANDUM FOR: Richard L. Bangart, Director
Division of Low Level Waste Management
and Decommissioning
Office of Nuclear Material Safety
and Safeguards

March 22, 1993

FROM: James G. Partlow
Associate Director for Projects
Office of Nuclear Reactor Regulation

SUBJECT: REQUEST FOR ANNUAL ASSISTANCE IN FULFILLING STAFF
REQUIREMENTS MEMORANDUM ADDRESSING STORAGE OF
LOW-LEVEL RADIOACTIVE WASTE

This memorandum is the annual update which responds to your February 24, 1992 request on the above subject for information that identifies all licensees for which we have licensing responsibility who have requested amendments or licenses to store Low-Level Radioactive Waste (LLW) on site, the number of amendments or licenses granted, and the dates of the submitted requests received during the year ending March 1, 1993.

NRR has researched the Part 50 licenses for operating reactors and pending requests from licensees for amendments or licenses. We have no Part 50 licenses nor amendments to Part 50 licenses currently in effect for the storage of LLW on site. We have no pending requests from Part 50 licensees to store LLW on site nor pending requests for amendments to Part 50 licenses that directly affect the storage of LLW on site.

All Part 50 operating licenses for power reactors contain a "boiler plate" clause which states: "receipt, possession, and use of source, by-product and special nuclear material as authorized by this license will be in accordance with the Commission's regulations in 10 CFR Part 30, 40, and 70, including 10 CFR Section 30.33, 40.32, 70.23 and 70.31." This clause, for example, provides storage of steam generators which are removed from the plant by authority of a steam generator replacement amendment to the Part 50 operating license. Although the steam generator replacement is authorized by Part 50 license amendment, subsequent storage of the old steam generator at the site is authorized "as by-product" material under the license boiler plate clause quoted above.

If you have any questions, please contact Dave Moran on 504-1494.

Original signed by Jack W. Roe for

James G. Partlow
Associate Director for Projects
Office of Nuclear Reactor Regulation

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OFC	PDII-4/LA	PDII-4/LM	PDII-4/D	DRPE:AD
NAME	MSanders	DMoran:as	FHebdon	GLarnas
DATE	3/22/93	3/22/93	3/22/93	3/22/93
OFC	DRPE:AD	ADP		
NAME	SVarga	JPartlow		
DATE	3/22/93	3/22/93		

DOCUMENT NAME: BANGART

RETURN TO REGULATORY CENTRAL FILES

9304010223 930322
PDR ORG NRRB
PDR

LF03
L-4-1, Pt. 61
X L-4-1, Pt. 50

Distribution

Central File (w/incoming)	
NRC & Local PDR (w/incoming)	
PDII-4 Rdg.	
Yellow Ticket File(w/incoming)	
TMurley/FMiraglia	12-G-18
JPartlow	12-G-18
S. Varga/CNorsworthy (#0920034)	14-E-4
GLainas	14-H-1
DMoran (w/incoming)	
M. Sanders	
B. Grimes	9-A-1
NRR Mail Room (YT 090034)	12-G-18
PFrederickson	RII
DCrutchfield	11-H-21
FGillespie	12-G-18
WRussell	12-G-18
BClayton	12-G-18

FROM: ORIGINAL DUE DT: 03/23/93 TICKET NO: 0920034
DGC DT: 02/24/91
RICHARD L. BANGART, DIRECTOR OF LOW-LEVEL WASTE NRR RCVD DATE: 02/27/92
NRRS
MANAGEMENT AND DECOMMISSIONING

TO:

FARTLOW ET. AL.

FOR SIGNATURE OF: ** YEL **

FARTLOW

DESC:

ROUTING:

REQUEST FOR ASSISTANCE IN FULFILLING STAFF
REQUIREMENTS MEMORANDUM ADDRESSING STORAGE OF
LOW-LEVEL RADIOACTIVE WASTE

MURLEY
MIRAGLIA
FARTLOW
RUSSELL
GILLESPIE
CRUTCHFIELD
MAILROOM 12 - 6 - 18

ASSIGNED TO: DRFE CONTACT: VARGA

Please review the due date immediately:

If the due date does not allow adequate time to respond to this ticket, you may request a revised due date. The request must have prior approval from the appropriate Associate Director or NRR Deputy Director and must include a valid justification. Contact NRR mailroom with the new due date (Celeste Smyre, ext-21229).

Please do not carry concurrence packages to Directors office without first going through the NRR mailroom.

ACT
DUE
E. 3/23/93

Rev. assign - no follow -

Due 3/25/93 for update.

Attn: VARGA (Held)

1.1
3/2/92

FROM: ORIGINAL DUE DT: 03/25/92 TICKET NO: 0920034
RICHARD L. BANGART, DIRECTOR OF LOW-LEVEL WASTE DUE DT: 02/24/92
NMSS NRR RCVD DATE: 02/27/92
MANAGEMENT AND DECOMMISSIONING

TO:

PARTLOW ET. AL.

FOR SIGNATURE OF: ** YEL **

PARTLOW

DESC:

ROUTING:

REQUEST FOR ASSISTANCE IN FULFILLING STAFF
REQUIREMENTS MEMORANDUM ADDRESSING STORAGE OF
LOW-LEVEL RADIOACTIVE WASTE

MURLEY
MIRAGLIA
PARTLOW
RUSSELL
GILLESPIE
CRUTCHFIELD
MAILROOM 12 - 6 - 18

ASSIGNED TO: DRPE CONTACT: VARGA

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ACTION	
DUE TO NRR DIRECTOR'S OFFICE	
BY	3/23/92



OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

January 30, 1992

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: *for* Samuel J. Childs, Secretary

SUBJECT: SECY-91-306 - ANALYSIS OF COMMENTS RECEIVED
ON TITLE-TRANSFER AND POSSESSION PROVISIONS
OF THE LOW-LEVEL RADIOACTIVE WASTE POLICY
AMENDMENTS ACT OF 1985

In view of the potential health and safety concerns associated with increased reliance on on-site storage of low-level waste (LLW), and in light of the framework that has been established by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA), the Commission continues to hold the view that it will not look favorably upon on-site storage of LLW by generators after January 1, 1996. The use of on-site storage should be considered an option of last resort.

Accordingly, the Commission (with all Commissioners agreeing) has decided to establish a regulatory framework setting forth the procedures and criteria that will apply to on-site storage of LLW beyond January 1, 1996. This framework, which will apply to all categories of LLW generators, is set out below. To implement the Commission's policy in this regard, the staff is directed to undertake rulemaking as follows:

1. Add a new 10 CFR 50.54(ee), as follows:

"(ee) (1) On-site storage of low-level waste (LLW) may be undertaken pursuant to existing authorities and procedures, 10 CFR 50.59, and all relevant licensing and regulatory requirements applicable to such storage, but in no event may such waste be stored on-site by the generator beyond January 1, 1996, except as specified in (2) below.

SECY NOTE: SECY-91-306 CONTAINS SENSITIVE ATTORNEY CLIENT INFORMATION AND WILL NOT BE RELEASED TO THE PUBLIC. THIS SRM WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS AFTER THE DATE OF ISSUE.

Enclosure

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400.

(2) For on-site storage of low-level waste beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site), the licensee shall document that:

(i) the licensee has exhausted other reasonable waste management options, including -- (1) management by the State in which such generator is located, pursuant to section 5(d)(2)(C) of the LLRWPA (i.e., the licensee has requested the State in which such generator is located to take title to and possession of the waste pursuant to this provision), and (2) the "contract option" of section 5(e)(1)(F) of the LLRWPA (i.e., the licensee has taken all reasonable steps to contract, either directly or through the State, for the disposal of such waste); and

(ii) such on-site storage activities will be consistent with and not compromise safe operation of the licensee's activities nor decrease the level of safety provided by applicable regulatory requirements.

(3) All relevant documentation regarding the actions taken pursuant to (2)(i) and (ii) of this subsection shall be retained by the licensee and made available for inspection by NRC."

2. Add new subsections 10 CFR 30.34(j), 40.41(g), and 70.32(k), as follows:

"(j)/(g)/(k) Whether stated therein or not, the following shall be deemed conditions in every license issued pursuant to the regulations in this part:

(1) Low-level waste (LLW) may be stored on-site provided it is authorized under existing conditions of the license and such storage is consistent with existing authorities and procedures and all relevant licensing and regulatory requirements applicable to such storage, but in no event may such waste be stored on-site by the generator beyond January 1, 1996, except as specified in (2) below.

(2) For on-site storage of low-level waste beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or

consolidation for shipment off-site), the licensee shall document that the licensee has exhausted other reasonable waste management options, including:

(i) management by the State in which such generator is located, pursuant to section 5(d)(2)(C) of the LLRWPA (i.e., the licensee has requested the State in which such generator is located to take title to and possession of the waste pursuant to this provision); and

(ii) the "contract option" of section 5(e)(1)(F) of the LLRWPA (i.e., the licensee has taken all reasonable steps to contract, either directly or through the State, for the disposal of such waste)

(3) All relevant documentation regarding the actions taken pursuant to (2)(i) and (ii) of this subsection shall be retained by the licensee and made available for inspection by NRC."

The explanatory text for the proposed rule should include:

- 1) A summary of the December 4, 1990 notice on the title transfer provisions, the comments received on the notice, and the staff's analysis of the comments.
- 2) An explanation that this rulemaking supplements, but does not supersede, the existing regulatory framework applicable to such storage, and that the conditions in themselves do not authorize on-site storage. In this regard, on-site storage of LLW at reactors is still subject to 10 CFR 50.59 evaluations, as well as all other regulatory requirements currently in place. In addition, licensees should continue to use appropriate existing regulatory guidance for on-site storage of low-level waste.
- 3) An explanation that the implementation of this rulemaking does not require licensees to make formal submittals to the agency, but instead requires that all relevant documentation of the steps taken to satisfy the requirements of this rulemaking shall be maintained by the licensee and shall be made available for inspection by NRC. The Commission may, however, ask for such reports as may be necessary to determine whether additional inspections or other regulatory attention is needed.
- 4) A detailed description of the title transfer provision of the LLRWPA, including the statutory obligation of

the states, upon request, to take title to and possession of LLW after January 1, 1996, if disposal capacity is not available. The staff should include and explain the basis for the position that "possession" of LLW by a State at a generator's facility will not generally be allowed.

- 5) A description of the NRC's existing procedures and requirements for storage of LLW.

In developing the proposed rule package, the staff should coordinate the proposal with the Agreement States before providing the proposed rule package for Commission approval. Coordination by mail is recommended in view of the fact that the next meeting at which all of the State representatives will assemble will not be until May 17, 1992.

A proposed rule shall be submitted to the Commission for consideration and approval by May 1, 1992. It is the Commission's strong desire to have a final rule in place by the end of 1992. The proposed rulemaking package should include letters to the Governors on the proposed rule.

(~~EDQ~~) (NMSS)

(SECY Suspense: 5/1/92)

9200023

The staff should provide the Commission with reports in April of each year, beginning in 1992, which indicate the number of requests received by NRC for amendments or licenses to store LLW and the number of amendments or licenses granted.

(~~EDQ~~) (NMSS)

(SECY Suspense: 4/30/92 and then annually)

9200024^{3/4}

Consistent with the staff's recommendation in Alternative 2 of SECY-91-306 and as experience is gained in licensing storage, the staff should assess the need for additional guidance or licensing requirements to supplement the existing regulatory framework for LLW storage. Staff should also consult with Agreement States for their views on additional measures needed and inform the Commission when significant needs are identified.

(~~EDQ~~) (NMSS)

(SECY Suspense: 8/28/92)

9200025

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OGC
OIG



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

ALL AGREEMENT STATES (SP-92-030)

PROPOSED RULEMAKING ON LOW-LEVEL RADIOACTIVE WASTE STORAGE

As discussed in my letter of February 7, 1992, the Commission has directed the staff to establish a regulatory framework, through rulemaking, that sets forth the procedures and criteria that will apply to onsite storage of low-level radioactive waste (LLW) after January 1, 1996. That letter also identified the specific regulatory revisions being considered. The storage issue was discussed at the NRC public meeting held with the Agreement States in Sacramento, California on October 29, 1991.

The Commission solicited public comments on eight questions concerning title transfer in late 1990. One of the principal issues raised by the commenters addressed the role that NRC should play in implementing the title and possession provisions of the Act. After consideration of the issues, the Commission continues to hold the view that it will not look favorably upon onsite storage of LLW by generators after January 1, 1996. NRC's preference is that LLW be permanently disposed of as soon as possible after it is generated. NRC recognizes that disposal may not be possible after January 1, 1993 due to closure of some sites.

For your review, we are providing the specific changes to the regulations which the Commission is considering. We are particularly interested in your comments and recommendations concerning the division of compatibility that should be assigned for the proposed changes.

Since the Commission has established May 1, 1992 as the date for the proposed rulemaking to the Commission, we will need to receive your comments on the enclosed material by March 14, 1992. We ask that you complete the yellow response tracking sheet and return it and your comments by overnight mail to Mr. Vandy L. Miller, Assistant Director, Office of State Programs, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Mail Stop 3-D-23, Rockville, Maryland 20852, or by fax (301-504-2395).

If you have any questions, please call me at 301-504-2326, or Mr. Jim Myers at 301-504-2328. We appreciate your cooperation.

Vandy L. Miller, Assistant Director
for State Agreements Program
Office of State Programs

Enclosure:
Supplementary Information

AS 5/11/92
PM: all paper is going ahead on this rule. It has been significantly changed due to Supreme Court decision in 92. The Commission is changing materially. Per State Solicitor
Bob Nelson
NRC

ON-SITE STORAGE OF LOW-LEVEL RADIOACTIVE WASTE
PROPOSED RULEMAKING
SUPPLEMENTARY INFORMATION

BACKGROUND

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Act) (P.L. 99-240) establishes a series of milestones, penalties, and incentives to ensure that Regional Compacts and States make adequate progress towards being able to manage their low-level radioactive waste (LLW) by 1993. Section 5(a) of the Act requires the sited States of Nevada, South Carolina, and Washington to make disposal capacity available to LLW generators until December 31, 1992 subject to: the States and compacts meeting the other milestones of the Act, the sites remaining operational, and received waste being within site specific volume limitations. Section 5(d)(2)(C) of the Act provides that if a State or compact cannot provide for disposal of its LLW after January 1, 1993, generators can request the State to take title to and possession of the generated waste, or the State must assume liability for not doing so. In 1993, States may avoid taking title and possession of the waste, but will forfeit the surcharge rebates established by the Act. However, after the final deadline of January 1, 1996, the States, upon proper notice by the generator or owner, shall take title to and be obligated to take possession. The State will be liable for all damages directly or indirectly incurred by the generator or owner if it fails to take possession as soon after

January 1, 1996 as the generator or owner notifies the State that the waste is available for shipment.

DISCUSSION OF PROPOSED REVISIONS

The Commission has directed the staff to publish a proposed rule that would establish procedures and criteria for on-site storage of LLW that will apply to reactor, material and fuel cycle licensees. For on-site storage between now and January 1, 1996, the existing regulatory framework will continue to be applicable. The on-site storage of LLW resulting from reactor operations can be undertaken pursuant to the existing authorities and procedures, 10 CFR 50.59, and all relevant licensing and regulatory requirements applicable to such storage. For material and fuel cycle licensees, on-site storage of LLW may be authorized provided it is authorized under the existing license conditions and the storage is consistent with existing authorities and procedures and all relevant licensing and regulatory requirements applicable to such storage.

Additionally, the Commission has concluded that "possession" of LLW by a State at the generator's facility will not generally be allowed. If it were, it would eliminate both the need for States to construct a centralized storage facility, and liability for not accepting possession of LLW under Section 5(d)(2)(C) of the Act.

The Act contemplates that a State seeking to avoid liability would need to develop its own storage capacity.

The following four documents in conjunction with the regulations in 10 CFR 20, 30, 40, 50, and 70 provide the regulatory and licensing framework for LLW storage. However, note that the generic letters and information notices are only informational and have no binding effect.

<u>Type</u>	<u>No.</u>	<u>Title</u>
Generic Letter	81-38	Interim Storage of Utility Licensee-Generated Low-Level Radioactive Waste at Reactor Sites
Generic Letter	85-14	Commercial Storage at Power Reactor Sites of Low-Level Radioactive Waste Not Generated by the Utility
Information Notice	89-13	Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites
Information Notice	90-09	Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees.

On-site storage of LLW will not be permitted after January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site) unless the licensee can document that it has exhausted other reasonable waste

management options. Such options include the management of the waste by the State in which the waste generator is located. The NRC will propose that the licensee request that the State take title to and possession of the waste pursuant to section 5(d)(2)(C) of the Act. Another option is that the licensee contract, either directly or through the State, for the disposal of its waste. In addition, reactor licensees will have to document that on-site storage activities will be consistent with, and not compromise, the safe operation of the licensee's activities, nor decrease the level of safety provided by applicable regulatory requirements.

The Commission intends to implement these requirements through rulemaking which will make them standard license conditions for every license issued for reactor, materials and fuel cycle licensees. The rulemaking will amend 10 CFR Parts 50.54, 30.34, 40.41, and 70.32, which are those sections of the regulations that identify standard conditions for reactor, materials, and fuel cycle licenses. Therefore, the licensee will not be required to make formal submittal to the NRC to show compliance with these conditions, but instead the rulemaking requires that all relevant documentation of the steps taken to satisfy the requirements of this rulemaking be maintained by the licensee and shall be made available for inspection by the NRC. The Commission may ask for such reports as may be necessary to determine whether additional inspections or other regulatory attention is required.

Enclosure 1

This rulemaking will supplement, but not supersede, the existing regulatory framework applicable to storage of LLW, and the conditions in themselves will not authorize on-site storage. On-site storage of LLW at reactors will continue to be subject to 10 CFR 50.59 evaluations, as well as all other regulatory requirements currently in place, such as applicable portions of 10 CFR Parts 20 and 30. Additionally, licensees should continue to use appropriate regulatory guidance for on-site storage of LLW.

The specific proposed revisions to 10 CFR Parts 30.34, 40.41, 50.54, and 70.32 are included in the following section.

PROPOSED REVISIONS

The Commission is considering the following changes to 10 CFR Parts 50.54, 30.34, 40.41, and 70.32.

1. Add a new 10 CFR 50.54(ee), as follows:

"(ee) (1) On-site storage of low-level waste (LLW) may be undertaken pursuant to existing authorities and procedures, 10 CFR 50.59, and all relevant licensing and regulatory requirements applicable to such storage, but in no event may such waste be stored on-site by the generator beyond January 1, 1996, except as specified in (2) below.

(2) For on-site storage of low-level waste beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site), the licensee shall document that:

(i) the licensee has exhausted other reasonable waste management options, including -- (1) management by the State in which such generator is located, pursuant to section 5(d)(2)(C) of the LLRWPA (i.e., the licensee has requested the State in which such generator is located to take title to and possession of the waste pursuant to this provision), and (2) the "contract option" of section 5(e)(1)(F) of the LLRWPA (i.e., the licensee has taken all reasonable steps to contract, either directly or through the State, for the disposal of such waste); and

(ii) such on-site storage activities will be consistent with and not compromise safe operation of the licensee's activities nor decrease the level of safety provided by applicable regulatory requirements.

(3) All relevant documentation regarding the actions taken pursuant to (2)(i) and (ii) of this subsection shall be retained by the licensee and made available for inspection by NRC."

2. Add new subsections 10 CFR 30.34(j), 40.41(g), and 70.32(k), as follows:

"(j)/(g)/(k) Whether stated therein or not, the following shall be deemed conditions in every license issued pursuant to the regulations in this part:

(1) Low-level waste (LLW) may be stored on-site provided it is authorized under existing conditions of the license and such storage is consistent with existing authorities and procedures and all relevant licensing and regulatory requirements applicable to such storage, but in no event may such waste be stored on-site by the generator beyond January 1, 1996, except as specified in (2) below.

(2) For on-site storage of low-level waste beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site), the licensee shall document that the licensee has exhausted other reasonable waste management options, including:

(1) management by the State in which such generator is located, pursuant to section 5(d)(2)(C) of the LLRWPA

(i.e., the licensee has requested the State in which such generator is located to take title to and possession of the waste pursuant to this provision); and

(ii) the "contract option" of section 5(e)(1)(F) of the LLRWPA (i.e., the licensee has taken all reasonable steps to contract, either directly or through the State, for the disposal of such waste)

(3) All relevant documentation regarding the actions taken pursuant to (2)(i) and (ii) of this subsection shall be retained by the licensee and made available for inspection by NRC."



OFFICE OF THE
SECRETARY

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

January 30, 1992

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: *for* Samuel J. Chalk, Secretary

SUBJECT: SECY-91-306 - ANALYSIS OF COMMENTS RECEIVED
ON TITLE-TRANSFER AND POSSESSION PROVISIONS
OF THE LOW-LEVEL RADIOACTIVE WASTE POLICY
AMENDMENTS ACT OF 1985

In view of the potential health and safety concerns associated with increased reliance on on-site storage of low-level waste (LLW), and in light of the framework that has been established by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA), the Commission continues to hold the view that it will not look favorably upon on-site storage of LLW by generators after January 1, 1996. The use of on-site storage should be considered an option of last resort.

Accordingly, the Commission (with all Commissioners agreeing) has decided to establish a regulatory framework setting forth the procedures and criteria that will apply to on-site storage of LLW **beyond January 1, 1996**. This framework, which will apply to all categories of LLW generators, is set out below. To implement the Commission's policy in this regard, the staff is directed to undertake rulemaking as follows:

1. Add a new 10 CFR 50.54(ee), as follows:

"(ee) (1) On-site storage of low-level waste (LLW) may be undertaken pursuant to existing authorities and procedures, 10 CFR 50.59, and all relevant licensing and regulatory requirements applicable to such storage, but in no event may such waste be stored on-site by the generator beyond January 1, 1996, except as specified in (2) below.

SECY NOTE: SECY-91-306 CONTAINS SENSITIVE ATTORNEY CLIENT INFORMATION AND WILL NOT BE RELEASED TO THE PUBLIC. THIS SRM WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS AFTER THE DATE OF ISSUE.

Enclosure

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(2) For on-site storage of low-level waste beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site), the licensee shall document that:

(i) the licensee has exhausted other reasonable waste management options, including -- (1) management by the State in which such generator is located, pursuant to section 5(d)(2)(C) of the LLRWPA (i.e., the licensee has requested the State in which such generator is located to take title to and possession of the waste pursuant to this provision), and (2) the "contract option" of section 5(e)(1)(F) of the LLRWPA (i.e., the licensee has taken all reasonable steps to contract, either directly or through the State, for the disposal of such waste); and

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(3) All relevant documentation regarding the actions taken pursuant to (2)(i) and (ii) of this subsection shall be retained by the licensee and made available for inspection by NRC."

The explanatory text for the proposed rule should include:

- 1) A summary of the December 4, 1990 notice on the title transfer provisions, the comments received on the notice, and the staff's analysis of the comments.
- 2) An explanation that this rulemaking supplements, but does not supersede, the existing regulatory framework applicable to such storage, and that the conditions in themselves do not authorize on-site storage. In this regard, on-site storage of LLW at reactors is still subject to 10 CFR 50.59 evaluations, as well as all other regulatory requirements currently in place. In addition, licensees should continue to use appropriate existing regulatory guidance for on-site storage of low-level waste.
- 3) An explanation that the implementation of this rulemaking does not require licensees to make formal submittals to the agency, but instead requires that all relevant documentation of the steps taken to satisfy the requirements of this rulemaking shall be maintained by the licensee and shall be made available for inspection by NRC. The Commission may, however, ask for such reports as may be necessary to determine whether additional inspections or other regulatory attention is needed.
- 4) A detailed description of the title transfer provision of the LLRWPA, including the statutory obligation of

the states, upon request, to take title to and possession of LLW after January 1, 1996, if disposal capacity is not available. The staff should include and explain the basis for the position that "possession" of LLW by a State at a generator's facility will not generally be allowed.

- 5) A description of the NRC's existing procedures and requirements for storage of LLW.

In developing the proposed rule package, the staff should coordinate the proposal with the Agreement States before providing the proposed rule package for Commission approval. Coordination by mail is recommended in view of the fact that the next meeting at which all of the State representatives will assemble will not be until May 17, 1992.

A proposed rule shall be submitted to the Commission for consideration and approval by May 1, 1992. It is the Commission's strong desire to have a final rule in place by the end of 1992. The proposed rulemaking package should include letters to the Governors on the proposed rule.

(~~SDO~~) (NMSS)

(SECY Suspense: 5/1/92)

9200023

The staff should provide the Commission with reports in April of each year, beginning in 1992, which indicate the number of requests received by NRC for amendments or licenses to store LLW and the number of amendments or licenses granted.

(~~SDO~~) (NMSS)

(SECY Suspense: 4/30/92 and then annually)

9200024

Consistent with the staff's recommendation in Alternative 2 of SECY-91-306 and as experience is gained in licensing storage, the staff should assess the need for additional guidance or licensing requirements to supplement the existing regulatory framework for LLW storage. Staff should also consult with Agreement States for their views on additional measures needed and inform the Commission when significant needs are identified.

(~~SDO~~) (NMSS)

(SECY Suspense: 8/28/92)

9200025

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OGC
OIG



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

ALL AGREEMENT STATES (SP-92-030)

PROPOSED RULEMAKING ON LOW-LEVEL RADIOACTIVE WASTE STORAGE

As discussed in my letter of February 7, 1992, the Commission has directed the staff to establish a regulatory framework, through rulemaking, that sets forth the procedures and criteria that will apply to onsite storage of low-level radioactive waste (LLW) after January 1, 1996. That letter also identified the specific regulatory revisions being considered. The storage issue was discussed at the NRC public meeting held with the Agreement States in Sacramento, California on October 29, 1991.

The Commission solicited public comments on eight questions concerning title transfer in late 1990. One of the principal issues raised by the commenters addressed the role that NRC should play in implementing the title and possession provisions of the Act. After consideration of the issues, the Commission continues to hold the view that it will not look favorably upon onsite storage of LLW by generators after January 1, 1996. NRC's preference is that LLW be permanently disposed of as soon as possible after it is generated. NRC recognizes that disposal may not be possible after January 1, 1993 due to closure of some sites.

For your review, we are providing the specific changes to the regulations which the Commission is considering. We are particularly interested in your comments and recommendations concerning the division of compatibility that should be assigned for the proposed changes.

Since the Commission has established May 1, 1992 as the date for the proposed rulemaking to the Commission, we will need to receive your comments on the enclosed material by March 14, 1992. We ask that you complete the yellow response tracking sheet and return it and your comments by overnight mail to Mr. Vandy L. Miller, Assistant Director, Office of State Programs, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Mail Stop 3-D-23, Rockville, Maryland 20852, or by fax (301-504-2395).

If you have any questions, please call me at 301-504-2326, or Mr. Jim Myers at 301-504-2328. We appreciate your cooperation.

Vandy L. Miller, Assistant Director
for State Agreements Program
Office of State Programs

Enclosure:
Supplementary Information

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ON-SITE STORAGE OF LOW-LEVEL RADIOACTIVE WASTE
PROPOSED RULEMAKING
SUPPLEMENTARY INFORMATION

BACKGROUND

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (Act) (P.L. 99-240) establishes a series of milestones, penalties, and incentives to ensure that Regional Compacts and States make adequate progress towards being able to manage their low-level radioactive waste (LLW) by 1993. Section 5(a) of the Act requires the sited States of Nevada, South Carolina, and Washington to make disposal capacity available to LLW generators until December 31, 1992 subject to: the States and compacts meeting the other milestones of the Act, the sites remaining operational, and received waste being within site specific volume limitations. Section 5(d)(2)(C) of the Act provides that if a State or compact cannot provide for disposal of its LLW after January 1, 1993, generators can request the State to take title to and possession of the generated waste, or the State must assume liability for not doing so. In 1993, States may avoid taking title and possession of the waste, but will forfeit the surcharge rebates established by the Act. However, after the final deadline of January 1, 1996, the States, upon proper notice by the generator or owner, shall take title to and be obligated to take possession. The State will be liable for all damages directly or indirectly incurred by the generator or owner if it fails to take possession as soon after

Enclosure 1

January 1, 1996 as the generator or owner notifies the State that the waste is available for shipment.

DISCUSSION OF PROPOSED REVISIONS

The Commission has directed the staff to publish a proposed rule that would establish procedures and criteria for on-site storage of LLW that will apply to reactor, material and fuel cycle licensees. For on-site storage between now and January 1, 1996, the existing regulatory framework will continue to be applicable. The on-site storage of LLW resulting from reactor operations can be undertaken pursuant to the existing authorities and procedures, 10 CFR 50.59, and all relevant licensing and regulatory requirements applicable to such storage. For material and fuel cycle licensees, on-site storage of LLW may be authorized provided it is authorized under the existing license conditions and the storage is consistent with existing authorities and procedures and all relevant licensing and regulatory requirements applicable to such storage.

Additionally, the Commission has concluded that "possession" of LLW by a State at the generator's facility will not generally be allowed. If it were, it would eliminate both the need for States to construct a centralized storage facility, and liability for not accepting possession of LLW under Section 5(d)(2)(C) of the Act.

The Act contemplates that a State seeking to avoid liability would need to develop its own storage capacity.

The following four documents in conjunction with the regulations in 10 CFR 20, 30, 40, 50, and 70 provide the regulatory and licensing framework for LLW storage. However, note that the generic letters and information notices are only informational and have no binding effect.

<u>Type</u>	<u>No.</u>	<u>Title</u>
Generic Letter	81-38	Interim Storage of Utility Licensee-Generated Low-Level Radioactive Waste at Reactor Sites
Generic Letter	85-14	Commercial Storage at Power Reactor Sites of Low-Level Radioactive Waste Not Generated by the Utility
Information Notice	89-13	Alternative Waste Management Procedures in Case of Denial of Access to Low-Level Waste Disposal Sites
Information Notice	90-09	Extended Interim Storage of Low-Level Radioactive Waste by Fuel Cycle and Materials Licensees.

On-site storage of LLW will not be permitted after January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site) unless the licensee can document that it has exhausted other reasonable waste

Enclosure 1

management options. Such options include the management of the waste by the State in which the waste generator is located. The NRC will propose that the licensee request that the State take title to and possession of the waste pursuant to section 5(d)(2)(C) of the Act. Another option is that the licensee contract, either directly or through the State, for the disposal of its waste. In addition, reactor licensees will have to document that on-site storage activities will be consistent with, and not compromise, the safe operation of the licensee's activities, nor decrease the level of safety provided by applicable regulatory requirements.

The Commission intends to implement these requirements through rulemaking which will make them standard license conditions for every license issued for reactor, materials and fuel cycle licensees. The rulemaking will amend 10 CFR Parts 50.54, 30.34, 40.41, and 70.32, which are those sections of the regulations that identify standard conditions for reactor, materials, and fuel cycle licenses. Therefore, the licensee will not be required to make formal submittal to the NRC to show compliance with these conditions, but instead the rulemaking requires that all relevant documentation of the steps taken to satisfy the requirements of this rulemaking be maintained by the licensee and shall be made available for inspection by the NRC. The Commission may ask for such reports as may be necessary to determine whether additional inspections or other regulatory attention is required.

This rulemaking will supplement, but not supersede, the existing regulatory framework applicable to storage of LLW, and the conditions in themselves will not authorize on-site storage. On-site storage of LLW at reactors will continue to be subject to 10 CFR 50.59 evaluations, as well as all other regulatory requirements currently in place, such as applicable portions of 10 CFR Parts 20 and 30. Additionally, licensees should continue to use appropriate regulatory guidance for on-site storage of LLW.

The specific proposed revisions to 10 CFR Parts 30.34, 40.41, 50.54, and 70.32 are included in the following section.

PROPOSED REVISIONS

The Commission is considering the following changes to 10 CFR Parts 50.54, 30.34, 40.41, and 70.32.

1. Add a new 10 CFR 50.54(ee), as follows:

"(ee) (1) On-site storage of low-level waste (LLW) may be undertaken pursuant to existing authorities and procedures, 10 CFR 50.59, and all relevant licensing and regulatory requirements applicable to such storage, but in no event may such waste be stored on-site by the generator beyond January 1, 1996, except as specified in (2) below.

(2) For on-site storage of low-level waste beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site), the licensee shall document that:

(i) the licensee has exhausted other reasonable waste management options, including -- (1) management by the State in which such generator is located, pursuant to section 5(d)(2)(C) of the LLRWPA (i.e., the licensee has requested the State in which such generator is located to take title to and possession of the waste pursuant to this provision), and (2) the "contract option" of section 5(e)(1)(F) of the LLRWPA (i.e., the licensee has taken all reasonable steps to contract, either directly or through the State, for the disposal of such waste); and

(ii) such on-site storage activities will be consistent with and not compromise safe operation of the licensee's activities nor decrease the level of safety provided by applicable regulatory requirements.

(3) All relevant documentation regarding the actions taken pursuant to (2)(i) and (ii) of this subsection shall be retained by the licensee and made available for inspection by NRC."

Enclosure 1

2. Add new subsections 10 CFR 30.34(j), 40.41(g), and 70.32(k), as follows:

"(j)/(g)/(k) Whether stated therein or not, the following shall be deemed conditions in every license issued pursuant to the regulations in this part:

(1) Low-level waste (LLW) may be stored on-site provided it is authorized under existing conditions of the license and such storage is consistent with existing authorities and procedures and all relevant licensing and regulatory requirements applicable to such storage, but in no event may such waste be stored on-site by the generator beyond January 1, 1996, except as specified in (2) below.

(2) For on-site storage of low-level waste beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site), the licensee shall document that the licensee has exhausted other reasonable waste management options, including:

(i) management by the State in which such generator is located, pursuant to section 5(d)(2)(C) of the LLRWPA

(i.e., the licensee has requested the State in which such generator is located to take title to and possession of the waste pursuant to this provision); and

(ii) the "contract option" of section 5(e)(1)(F) of the LLRWPA (i.e., the licensee has taken all reasonable steps to contract, either directly or through the State, for the disposal of such waste)

(3) All relevant documentation regarding the actions taken pursuant to (2)(i) and (ii) of this subsection shall be retained by the licensee and made available for inspection by NRC."