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RULEMAKING ISSUE

(Notation Vote)

March 11, 1994

SECY-94-062

FOR: The Commissioners

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: WITHDRAWAL OF PROPOSED RULEMAKING TO ESTABLISH PROCEDURES
AND CRITERIA FOR ON-SITE STORAGE OF LOW-LEVEL RADIOACTIVE
WASTE AFTER JANUARY 1, 1996

PURPOSE:

To obtain Commission approval of a Federal Register notice that would withdraw the proposed rulemaking to establish procedures and criteria for on-site storage of low-level radioactive waste (LLW) after January 1, 1996.

SUMMARY:

In SECY-93-323, dated November 29, 1993, the staff recommended that the Commission approve the withdrawal of the proposed rulemaking to establish procedures and criteria for on-site storage of LLW after January 1, 1996. The Commission approved the withdrawal in a Staff Requirements Memorandum (SRM) dated February 1, 1994. In this SRM, the staff was directed to submit the proposed withdrawal notice to the Commission for review and approval before publication.

BACKGROUND:

In an SRM dated January 30, 1992, the Commission directed the staff to develop a proposed rule that would establish a regulatory framework containing the procedures and criteria applicable to the on-site storage of LLW beyond

Contact: Robert A. Nelson, NMSS
504-2004

NOTE: TO BE MADE PUBLICLY AVAILABLE
WHEN THE FINAL SRM IS MADE
AVAILABLE

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January 1, 1996. The proposed rule was published in the Federal Register on February 2, 1993 (58 FR 6730). The public comment period expired on April 5, 1993.

After considering the comments submitted on the proposed rule, the staff determined that the proposed rule would not achieve either of the proposed rule's objectives. The staff found that there is not a sufficient connection between the requirements in the rule for documenting that a licensee has exhausted reasonable disposal options and the objective of reducing on-site storage of LLW or encouraging the development of new LLW disposal capacity.

In addition, the staff found that the proposed rule would not necessarily provide licensees a substantially greater incentive over existing requirements to dispose of their LLW at available locations in a timely manner. Therefore, the staff concluded the proposed rule would not be a necessary or significant addition to the protection of the public health and safety. The staff forwarded its recommendations to the Commission on November 29, 1993, in SECY-93-323.

In an SRM dated February 1, 1994, the staff was advised that the Commission (with all Commissioners agreeing) had approved the staff proposal to withdraw the proposed rule. The staff was directed to provide a clear indication in the withdrawal notice that the Commission continues to favor disposal of LLW over storage and that withdrawal of this proposed rule in no way alters that position. In addition, the staff was directed to submit the proposed withdrawal notice to the Commission for review and approval before publication.

DISCUSSION:

The notice to withdraw the proposed rulemaking (Enclosure 1) has been prepared in accordance with the requirements of the SRM dated February 1, 1994. The notice includes:

- The background of the rulemaking.
- The rationale for the withdrawal.
- A summary of the comments that impacted on the decision to withdraw the proposed rule and the U.S. Nuclear Regulatory Commission response to these comments.
- A clear statement that the Commission continues to favor disposal of LLW over storage and that withdrawal of this proposed rule in no way alters that position. In addition, the notice states that the Commission expects LLW disposal facilities to be sited and developed in a timely manner, and that it expects waste generators and States to continue to take all reasonable steps to ensure that LLW disposal capacity is available soon.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

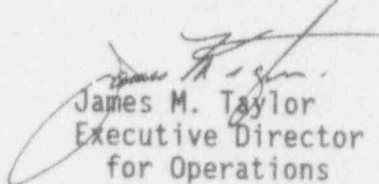
RECOMMENDATION:

That the Commission:

- (1) Approve the publication of the notice withdrawing the proposed rulemaking (Enclosure 1).
- (2) Note that:
 - (a) The notice would be published in the Federal Register.
 - (b) The Subcommittee on Energy and Power of the House Committee on Energy and Commerce, the Subcommittee on Energy and Mineral Resources of the House Committee on Natural Resources, and the Subcommittee on Clean Air and Nuclear Regulation of the Senate Committee on Environment and Public Works will be informed of this action (Enclosure 2).
 - (c) A public announcement will be issued (Enclosure 3).

SCHEDULING:

The staff does not know any specific circumstance that would require Commission action by any particular date in the near term.


James M. Taylor
Executive Director
for Operations

Enclosures:

1. Notice of Withdrawal of Proposed Rulemaking
2. Congressional Letters
3. Public Notice

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB Monday, March 28, 1994.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Monday, March 21, 1994, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION:

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

RIN 3150-AE22

Procedures and Criteria for On-Site Storage
of Low-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a notice of proposed rulemaking that would have amended its regulations for reactor, material, fuel cycle, and independent spent fuel storage licensees. The proposed rule would have established a regulatory framework containing the procedures and criteria that would have applied to on-site storage of low-level radioactive waste (LLW), after January 1, 1996. After considering the comments submitted on the proposed rule, the NRC does not believe that there is sufficient connection between the requirements in the rule for documenting that a licensee has exhausted reasonable waste disposal options and the objectives of reducing on-site storage of LLW, or encouraging the development of new LLW disposal capacity. In addition, the NRC cannot state that this rule would provide a licensee substantially greater incentives over existing requirements to dispose of their LLW at available locations in a timely manner. Therefore, the proposed rule would neither be a necessary nor significant addition to the protection of the public health and safety. As a

result, the Commission concludes that it should withdraw the proposed rule. The Commission continues to favor disposal of LLW over storage and emphasizes that withdrawal of this proposed rulemaking in no way alters this position. The Commission expects LLW disposal facilities to be sited and developed in a timely manner. The Commission also expects waste generators and States to continue to take all reasonable steps to ensure that LLW disposal capacity is available soon.

FOR FURTHER INFORMATION, CONTACT: Robert Nelson, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504-2004.

SUPPLEMENTARY INFORMATION:

Background

On February 2, 1993 (58 FR 6730), the NRC published in the Federal Register, proposed amendments to 10 CFR Parts 30, 40, 50, 70, and 72 of its regulations. Under the provisions of the proposed rule, on-site storage of LLW would not have been permitted after January 1, 1996 (other than reasonable, short-term storage necessary for decay or for collection or consolidation for shipment off-site, when a licensee has access to an operating LLW disposal facility), unless a licensee documented that it had exhausted other reasonable waste management options. These options included the management of the waste by the State in which a waste generator is located. In addition, a reactor licensee would have had to document that

on-site storage activities were consistent with, and did not compromise the safe operation of the licensee's activities, and did not decrease the level of safety provided by applicable regulatory requirements. The proposed rule would have required applicable licensees to retain all relevant documentation for at least three years and to make the documentation available for NRC inspection. The 60-day comment period for the proposed rule expired on April 5, 1993.

Discussion

Fifty-five comment letters were received addressing the proposed rule. The commenters' principal concerns, impacting the NRC's decision to withdraw the proposed rule, are: (1) the need to define "reasonable waste management options;" (2) the burden imposed on licensees; (3) the effect on the protection of the public health and safety and the environment; and (4) the impact on the States. These concerns are discussed in the following sections.

Definition of "Reasonable Waste Management Options"

The proposed rule would have required licensees to take all other reasonable waste management options before storing LLW on-site after January 1, 1996. Because of the changing disposal situation, it is not possible to define in advance what will or will not be viewed as a reasonable option. This is particularly true when considering disposal costs. Although disposal costs are expected to increase, no firm cost estimates are currently available. However, the NRC would expect costs to be a consideration in

determining if an option is reasonable. As several commenters suggested, other considerations may be appropriate to determine if an option is reasonable. These considerations could include, but would not be limited to, the potential liability of the generator for a particular disposal option, the imminent availability of a new waste treatment technology, or the imminent availability of centralized storage by the State. The lack of a clear, unambiguous definition for "reasonable" would afford licensees a large degree of latitude in developing a rationale for storing LLW on-site, if they chose to do so. Therefore, it is unlikely that a licensee would pursue an option that is not "reasonable." For these reasons, rule implementation would be extremely difficult. It is unlikely that the proposed rule would reduce on-site storage of LLW except for a few isolated cases.

Burden on Licensees

In the Supplementary Information that accompanied the proposed rule, the NRC identified those actions it would expect a licensee to take to comply with the proposed rule. These actions would have included an annual request for access to each operating commercial LLW disposal facility for disposal of the licensee's LLW. Based on public comments, the NRC has reexamined the need for this action. If the disposal facility operator and/or the compact commission in which the disposal facility is located has already provided access/import policy information to the generator or the generator's State regulatory agency, individual letters to disposal facility operators would not be required. The NRC expects that LLW disposal facility access/import policies will be well-publicized and, therefore, generally well-known. Written

confirmation of these policies by individual LLW generators would place an unnecessary burden, albeit small, on the LLW generators. In addition, it is unlikely that these letters would cause any changes to restrictive access/import policies. This assessment is based on the actions of the Northwest and Southeast Compact Commissions. These compacts have clearly publicized and strictly enforced their respective policies with regard to access to disposal sites.

The annual requirement to request access would also place a burden on disposal facility operators. Although the proposed rule contained no requirements applicable to disposal facility operators, there was an implicit expectation that disposal facility operators would respond to the generators' requests for access. Individual responses would have been an excessive and unwarranted burden on disposal facility licensees. Therefore, the Commission believes that individual access requests by the LLW generators are similarly unwarranted.

Also, to require an annual request for access (as opposed to an inquiry on the conditions of access) presumes a fact that was not established in the proposed rule itself - that in all cases, for all years, the conditions and costs associated with the requested access are reasonable.

The NRC has been unable to identify a meaningful alternative to the requirement for an annual licensee request that would impose less of a burden while also permitting a licensee to demonstrate (and document) that it has exhausted all other options to comply with the rule.

Protection of the Public Health and Safety and the Environment

The NRC continues to believe that disposal of LLW is safer and involves less risk to the public health and safety than on-site storage. Disposal of waste in a limited number of facilities licensed under the requirements of 10 CFR Part 61 or compatible Agreement State regulations will provide better protection of the public health and safety and the environment than long-term storage at hundreds or thousands of sites around the country. However, the protection of the public health and safety and the environment would not have been enhanced by the proposed rule because the rule would not significantly reduce the amount of LLW stored on-site.

Impact on the States

The Commission agrees with those commenters who argued that the rule would have little positive impact on the development of new disposal facilities. The policy embodied in the proposed regulations to discourage the storage of LLW on-site was intended to help encourage national progress in the development of LLW disposal facilities. However, it is difficult to predict the extent of the rule's impact on this process, given the complex, time-consuming, and often litigious process involved in siting, licensing, and developing an LLW disposal facility. Although NRC occupies a unique position in the National Program and its rules, policies, and actions receive widespread attention, it is not clear that this rule would have a significant positive impact on the development of new LLW disposal facilities.

For unaffiliated States planning to develop a disposal facility, the proposed rule would possibly have impacted on this development process. Unaffiliated States may not have the ability to exclude out-of-State waste. Therefore, even assuming the rule could have been effective in deterring generators from storing substantial quantities of wastes when disposal capacity becomes available, the proposed rule would have tended to require all LLW generators without access to a regional disposal facility to ship their waste to an operating disposal facility in an unaffiliated State. The prospect of receiving unwanted LLW for disposal could slow or halt LLW disposal facility development in these States; the proposed rule, if effective, would have increased this prospect. Currently, two unaffiliated States (Massachusetts and New York) are planning to develop LLW disposal facilities. The unaffiliated States of Maine, Texas, and Vermont are planning to form a compact with Texas as the host State.

In addition, the proposed rule has received little support from the Agreement States. The NRC staff informed the Agreement States of the rulemaking in February 1992 and requested their comments. One State supported the proposed rulemaking and three States opposed it. Two States, although not opposing any provisions of the rule, stated that the rulemaking should not proceed until the Supreme Court decides on the constitutionality of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) and the title-transfer provision. Three States provided comments and questions without taking a position on the proposed rulemaking. One State reserved comment and four States had no comments. Fifteen Agreement States did not respond. Four Agreement States responded to the notice of proposed rulemaking published in

February 1993. One Agreement State supported the proposed rule and three opposed it. To be effective, the rule must be applied in the Agreement States, as well as in States where NRC exercises regulatory jurisdiction.

Summary of Public Comments and NRC Responses

The NRC received a total of 55 comment letters on the proposed rule. Comments were received from State and local government organizations and offices (8); utilities or their counsel (21); non-utility LLW generators (9); nuclear power and nuclear material user-groups (5); a disposal facility operator (1); public interest groups (7); and private citizens (4). Copies of these letters are available for public inspection and copying, for a fee, at the NRC Public Document Room at 2120 L Street, NW. (Lower Level), Washington, D.C., telephone (202) 634-3273.

Of the 55 letters received, 10 endorsed adoption of the proposed rule, 24 opposed its adoption, and 21 provided comments without taking a clear position on the rulemaking. Many of the commenters requested clarification of the phrase "reasonable waste management options." The adequacy and clarity of NRC's argument concerning the protection of the public health and safety and the environment was a concern of a large number of commenters. Many of these commenters stated that storage should be preferred to disposal. Of equal concern was the financial burden of the rule on licensees and the regulatory impact of the rule on the States.

The public comments and NRC responses related to the Commission's decision to withdraw the proposed rule are provided below.

1. Comment. Twenty-three commenters stated that the phrase "reasonable waste management options" is ambiguous and needs to be better defined. Many of these commenters stated that the application of financial and/or cost-benefit considerations should be allowed to determine reasonable options. Several of these commenters recommended changing "reasonable waste management options" to "reasonable waste disposal options." The commenters explained that the proposed rule could be interpreted to apply to a broad range of waste management practices, including waste minimization and volume reduction. Three commenters stated that consideration should be given to the generator's assessment of the generator's potential liability associated with disposal at a particular facility.

Response. The proposed rule was intended to require LLW generators to use waste disposal capacity to the extent that this capacity is reasonably available. The proposed rule was not intended to require generators to demonstrate that they have processed or treated waste as a condition for storage beyond January 1, 1996. Therefore, the NRC agrees that a change from "reasonable waste management options" to "reasonable waste disposal options" would have been appropriate. However, because of the changing disposal situation, it is not possible to define in advance what will or will not be viewed as a reasonable disposal option. This is particularly true with disposal costs. Although disposal costs are expected to increase, no firm cost estimates are currently available. However, the NRC would expect costs

to be a consideration in determining if an option is reasonable. As several commenters suggested, other considerations may be appropriate to determine if an option is reasonable. These considerations could include, but not be limited to, the potential liability of the generator for a particular disposal option, the imminent availability of a new waste treatment technology, or the imminent availability of centralized storage by the State. The lack of a clear, unambiguous definition for "reasonable" would result in licensee uncertainty in complying with the rule and NRC uncertainty in enforcing the rule.

2. Comment. One commenter stated that the NRC had not responded directly to a previously submitted Agreement State comment that the rule did not appear to be based on protection of the public health and safety, or any technical requirements.

Response. The NRC believes that the protection of the public health and safety and the environment is enhanced by disposal, rather than by long-term, indefinite storage of waste. This position is based on three concerns associated with the storage of LLW. These conditions are: (1) waste container degradation and the consequences of this degradation; (2) increased radiation exposure to workers; and (3) potential releases in the event of an accident. However, after considering the comments submitted on the proposed rule, the NRC does not believe that there is sufficient connection between the requirements in the rule for documenting that a licensee has exhausted reasonable waste disposal options and the objectives of reducing on-site storage of LLW or encouraging the development of new LLW disposal capacity.

In addition, the NRC cannot state that this rule would provide licensees substantially greater incentive over existing requirements to dispose of their LLW at available locations in a timely manner. Therefore, the proposed rule would not be a necessary or significant addition to the protection of the public health and safety.

3. Comment. Five commenters stated that the proposed rule will have little positive impact on the development of new disposal facilities.

Response. Based on a review of public comments and after further consideration, the NRC agrees that the proposed rule may have little positive impact on the development of new disposal facilities. The policy discouraging the storage of LLW embodied in the proposed regulations was intended to help encourage national progress in the development of LLW disposal facilities. However, it is difficult to predict the extent of the rule's impact on this process, given the complex, time-consuming, and often litigious process involved in siting, licensing, and developing an LLW disposal facility. Although NRC occupies a unique position in the National Program and its rules, policies, and actions receive widespread attention, it is not clear that this rule would have a significant positive impact on the development of new LLW disposal facilities.

4. Comment. One commenter questioned how this amendment would force or encourage the States to proceed with the siting process.

Response. The incorporation in its regulations of NRC's long-standing position concerning the on-site storage of LLW was intended to encourage the States to move forward with the development of LLW disposal facilities. The proposed rule was intended to ensure that all disposal options potentially available to generators are investigated. However, the NRC cannot state that this rule would provide licensees substantially greater incentive over existing requirements to dispose of their LLW at available locations in a timely manner.

However, the withdrawal of this proposed rule does not alter the Commission position concerning long-term on-site storage of LLW. The Commission considers the long-term on-site storage of LLW to be a last-resort measure. NRC's preference is that LLW be permanently disposed of as soon as possible after it is generated. The protection of public health and safety and the environment is enhanced by disposal rather than long-term storage of wastes. In addition, the Commission continues to support the goals that have been established in the LLRWPA. The Commission expects LLW disposal facilities to be sited and developed in a timely manner and that waste generators and States will continue to take all reasonable steps to ensure that LLW disposal capacity is available soon.

5. Comment. Six commenters stated that the annual access request requirement would be unproductive and unnecessary if conditions remain

unchanged from year to year.

Response. The NRC agrees. In the "Supplementary Information" which accompanied the proposed rule, NRC provided information concerning the expected actions to show compliance with the proposed rule. This information stated that NRC would expect the licensee to make an annual request for access to each operating commercial LLW disposal facility for disposal of the licensee's LLW. If the disposal facility operator and/or the compact commission in which the disposal facility is located has already provided access/import policy information to the generator or the generator's State regulatory agency, individual letters to disposal facility operators would not be required. The NRC expects that LLW disposal facility access/import policies will be well-publicized and therefore, generally well known. Written confirmation of these policies by individual LLW generators would have placed an unnecessary burden, albeit small, on the LLW generators and a significant burden on disposal facility operators.

6. Comment. Four commenters stated that the rule would place an excessive burden on disposal facility operators to respond to each request.

Response. The NRC agrees. The proposed rule contains no requirements applicable to disposal facility operators. However, there is an implicit expectation that disposal facility operators respond to the generators' requests for access, either individually or in a well-publicized announcement of access/import policy of the host State or associated compact commission. Individual responses would be an excessive and unwarranted burden on disposal

facility licensees.

7. Comment. Several additional questions were received on the actions a licensee would be required to take to comply with the rule. One commenter noted that State and/or compact provisions may not permit a generator to export LLW and asked the question: "If a petition for export has been denied, what additional action should the licensee take to comply?" Another commenter asked the number of requests required to show compliance and wondered whether such requests should be sent by certified mail. This commenter also asked what the licensee would be expected to do if the disposal facility operator(s) failed to respond.

Response. The NRC agrees that some compact commissions may not permit the export of LLW from the compact. It would be unreasonable to expect a licensee that had been denied an export petition to take any other action. Because the rule is being withdrawn, the remaining questions concerning compliance are moot.

8. Comment. Two commenters stated that the language requiring Part 50 licensees to document that their storage activities will not "compromise safe operation of the licensee's activities, nor decrease the level of safety," should be deleted. These commenters believed that the proposed rule appears to single out Part 50 licensees. In addition, these commenters stated that if the NRC believes that additional requirements are necessary to ensure safety of LLW storage activities, those requirements should be identified specifically and their health and safety basis provided, so licensees may

effectively comment on them.

Response. The NRC agrees that the requirements of the proposed 10 CFR 50.54(ff)(2)(ii) are not necessary. Power reactor licensees are required to document the safety of LLW storage facilities under other conditions of their licenses (e.g., 10 CFR 50.59, for a new storage facility).

Conclusions

The NRC does not now believe that there is a sufficient connection between the requirements in the proposed rule for documenting that a licensee has exhausted reasonable disposal options and the objectives of reducing on-site storage of LLW, or encouraging the development of new LLW disposal capacity. The few comments received in support of the proposed rule were based on the general desirability of encouraging disposal over storage. However, these commenters did not address the issue of whether the documentation procedures in the proposed rule would prove to be an effective method for achieving this goal. After further analysis of the rationale for the rule prompted by the public comments, it is not clear that this proposed rule would provide licensees a substantially greater incentive over existing requirements to dispose of their LLW at available locations in a timely manner. Therefore, the proposed rule would neither be a necessary nor significant addition to the protection of the public health and safety.

In view of these considerations, the proposed rule is withdrawn. However, the withdrawal of this proposed rule does not preclude the Commission from issuing similar notices in the future nor commit the Commission to any course of action with regard to the on-site storage of LLW.

Dated at Rockville, Maryland, this ____ day of _____, 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,
Secretary of the Commission



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Philip R. Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Nuclear Regulatory Commission is withdrawing a notice of proposed rulemaking, published in the Federal Register on February 2, 1993, in which the NRC proposed to amend its regulations for reactor, material, fuel cycle, and independent spent fuel storage licensees. The proposed rule would have established a regulatory framework containing the procedures and criteria that would have applied to on-site storage of low-level radioactive waste (LLW), beyond January 1, 1996. Enclosed is a copy of the notice that will be published shortly in the Federal Register.

Under the provisions of the proposed rule, on-site storage of LLW would not have been permitted after January 1, 1996 (other than reasonable short-term storage necessary for decay, or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), unless the licensee could have documented that it had exhausted other reasonable waste management options. These options included the management of the waste by the State in which the waste generator is located. In addition, reactor licensees would have had to document that on-site storage activities would be consistent with and not compromise the safe operation of the licensee's activities, and not decrease the level of safety provided by applicable regulatory requirements. The proposed rule would have required licensees to retain all relevant documentation, regarding actions taken pursuant to the proposed rule, to be retained for at least three years and to make the documentation available for NRC inspection. The rulemaking would have amended 10 CFR Parts 30.34, 40.41, 50.54, 70.32, and 72.44, which are those sections of the regulations that identify standard conditions for reactor, material, fuel cycle, and independent spent fuel storage licenses.

After considering the comments submitted on the proposed rule, the NRC does not now believe that there is sufficient connection between the requirements in the rule for documenting that a licensee has exhausted reasonable waste disposal options and the objective of reducing on-site storage of LLW or encouraging the development of new LLW disposal capacity. In addition, the NRC cannot state that this rule would provide licensees substantially greater incentive over existing requirements to dispose of their LLW at available locations in a timely manner. Therefore, the proposed rule would be neither a necessary nor significant addition to the protection of the public health and

Enclosure 2

The Honorable Philip R. Sharp

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safety. As a result, the Commission concludes that it should withdraw the proposed rule published on February 2, 1993.

However, the withdrawal of this proposed rule does not alter the Commission position concerning long-term on-site storage of LLW. The Commission considers the long-term on-site storage of LLW to be a last-resort measure. NRC's preference is that LLW be permanently disposed of as soon as possible after it is generated. The protection of public health and safety and the environment is enhanced by disposal rather than long-term storage of wastes.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures:

1. Public Announcement
2. Federal Register Notice

cc: Representative Michael Bilirakis



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

The Honorable Joseph I. Lieberman, Chairman
Subcommittee on Clean Air and Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

The Nuclear Regulatory Commission is withdrawing a notice of proposed rulemaking, published in the Federal Register on February 2, 1993, in which the NRC proposed to amend its regulations for reactor, material, fuel cycle, and independent spent fuel storage licensees. The proposed rule would have established a regulatory framework containing the procedures and criteria that would have applied to on-site storage of low-level radioactive waste (LLW), beyond January 1, 1996. Enclosed is a copy of the notice that will be published shortly in the Federal Register.

Under the provisions of the proposed rule, on-site storage of LLW would not have been permitted after January 1, 1996 (other than reasonable short-term storage necessary for decay, or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), unless the licensee could have documented that it had exhausted other reasonable waste management options. These options included the management of the waste by the State in which the waste generator is located. In addition, reactor licensees would have had to document that on-site storage activities would be consistent with and not compromise the safe operation of the licensee's activities, and not decrease the level of safety provided by applicable regulatory requirements. The proposed rule would have required licensees to retain all relevant documentation, regarding actions taken pursuant to the proposed rule, to be retained for at least three years and to make the documentation available for NRC inspection. The rulemaking would have amended 10 CFR Parts 30.34, 40.4, 50.54, 70.32, and 72.44, which are those sections of the regulations that identify standard conditions for reactor, material, fuel cycle, and independent spent fuel storage licenses.

After considering the comments submitted on the proposed rule, the NRC does not now believe that there is sufficient connection between the requirements in the rule for documenting that a licensee has exhausted reasonable waste disposal options and the objective of reducing on-site storage of LLW or encouraging the development of new LLW disposal capacity. In addition, the NRC cannot state that this rule would provide licensees substantially greater incentive over existing requirements to dispose of their LLW at available locations in a timely manner. Therefore, the proposed rule would be neither a necessary nor significant addition to the protection of the public health and

The Honorable Richard H. Lehman

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safety. As a result, the Commission concludes that it should withdraw the proposed rule published on February 2, 1993.

However, the withdrawal of this proposed rule does not alter the Commission position concerning long-term on-site storage of LLW. The Commission considers the long-term on-site storage of LLW to be a last-resort measure. NRC's preference is that LLW be permanently disposed of as soon as possible after it is generated. The protection of public health and safety and the environment is enhanced by disposal rather than long-term storage of wastes.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures:

1. Public Announcement
2. Federal Register Notice

cc: Representative Barbara F. Vucanovich



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

The Honorable Richard H. Lehman, Chairman
Subcommittee on Energy and Mineral Resources
Committee on Natural Resources
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

The Nuclear Regulatory Commission is withdrawing a notice of proposed rulemaking, published in the Federal Register on February 2, 1993, in which the NRC proposed to amend its regulations for reactor, material, fuel cycle, and independent spent fuel storage licensees. The proposed rule would have established a regulatory framework containing the procedures and criteria that would have applied to on-site storage of low-level radioactive waste (LLW), beyond January 1, 1996. Enclosed is a copy of the notice that will be published shortly in the Federal Register.

Under the provisions of the proposed rule, on-site storage of LLW would not have been permitted after January 1, 1996 (other than reasonable short-term storage necessary for decay, or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), unless the licensee could have documented that it had exhausted other reasonable waste management options. These options included the management of the waste by the State in which the waste generator is located. In addition, reactor licensees would have had to document that on-site storage activities would be consistent with and not compromise the safe operation of the licensee's activities, and not decrease the level of safety provided by applicable regulatory requirements. The proposed rule would have required licensees to retain all relevant documentation, regarding actions taken pursuant to the proposed rule, to be retained for at least three years and to make the documentation available for NRC inspection. The rulemaking would have amended 10 CFR Parts 30.34, 40.41, 50.54, 70.32, and 72.44, which are those sections of the regulations that identify standard conditions for reactor, material, fuel cycle, and independent spent fuel storage licenses.

After considering the comments submitted on the proposed rule, the NRC does not now believe that there is sufficient connection between the requirements in the rule for documenting that a licensee has exhausted reasonable waste disposal options and the objective of reducing on-site storage of LLW or encouraging the development of new LLW disposal capacity. In addition, the NRC cannot state that this rule would provide licensees substantially greater incentive over existing requirements to dispose of their LLW at available locations in a timely manner. Therefore, the proposed rule would be neither a necessary nor significant addition to the protection of the public health and

The Honorable Joseph I. Lieberman -2-

safety. As a result, the Commission concludes that it should withdraw the proposed rule published on February 2, 1993.

However, the withdrawal of this proposed rule does not alter the Commission position concerning long-term on-site storage of LLW. The Commission considers the long-term on-site storage of LLW to be a last-resort measure. NRC's preference is that LLW be permanently disposed of as soon as possible after it is generated. The protection of public health and safety and the environment is enhanced by disposal rather than long-term storage of wastes.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosures:

1. Public Announcement
2. Federal Register Notice

cc: Senator Alan K. Simpson

NRC WITHDRAWS PROPOSED CHANGES TO REGULATIONS
FOR ON-SITE STORAGE OF LOW-LEVEL RADIOACTIVE WASTE

The Nuclear Regulatory Commission is withdrawing a proposed regulation on low-level radioactive waste that was aimed at discouraging licensees from storing the waste rather than sending it to a permanent disposal facility. The Commission continues to favor disposal of low-level waste over long-term storage, and the withdrawal of the proposed rule in no way alters that position.

However, after considering comments received on the proposed rule, which was published in the Federal Register for public comment on February 2, 1993, the Commission does not believe that there is sufficient connection between the requirements in the rule and the objectives of reducing on-site storage of low-level waste or encouraging the development of new low-level waste disposal capacity.

The proposed rule would not have permitted licensees to store low-level radioactive waste on-site after January 1, 1996 (other than reasonable short-term storage for radioactive decay or for collection or consolidation for shipment off-site to a disposal facility), unless the licensee could document that it had exhausted other reasonable waste management options. The proposal would have required that the licensee attempt to contract, either directly or through the State in which the licensee's facility is located, for the disposal of the waste. Licensees would have been required to retain all relevant

documentation on actions taken under the rule for at least three years and to make the documentation available for NRC inspection.

Existing NRC regulations will continue to be used for on-site storage of low-level radioactive waste. These rules permit on-site storage if all relevant licensing and regulatory requirements are met.