

Stephen B. Bram
Vice President

Consolidated Edison Company of New York, Inc
Indian Point Station
Broadway & Bleakley Avenue
Buchanan, NY 10511
Telephone (914) 737-8116

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 50054, 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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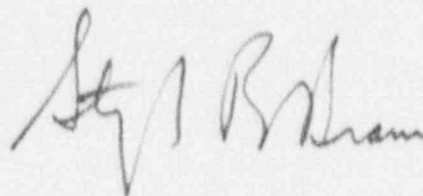
Accordingly, such wastes will legally belong to the State and not to their utility or non-utility generators. As a consequence, NRC is obligated under the Act to look to the respective States for exclusive custodial responsibility for such wastes which devolve to State ownership by operation of law. 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,

A handwritten signature in dark ink, appearing to read "Stephen R. Kramer". The signature is written in a cursive style with a large, stylized initial "S".