

# HUNTON & WILLIAMS

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February 8, 1991

Dr. Thomas E. Murley  
Director  
Office of Nuclear Reactor Regulation  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

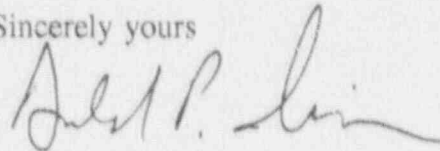
Long Island Lighting Company  
(Shoreham Nuclear Power Station, Unit 1)

Dear Dr. Murley:

On December 11, 1990, I wrote to you on behalf of Long Island Lighting Company concerning the proposed shipment of certain radioactively contaminated components from the Shoreham Nuclear Power Station to the Barnwell, S.C. radioactive waste repository. In that letter, I stated that LILCO believed that the State of South Carolina was likely to continue to permit low level radioactive waste from the State of New York to be shipped to Barnwell, and therefore that the Staff might wish to reevaluate its initial characterization of this proposed shipment as involving "exigent circumstances."

The purpose of this letter is to update my December 11 letter. On January 28, 1991, the State of South Carolina (jointly with the States of Washington and Nevada) notified the State of New York that it considered New York to be currently in compliance with the 1985 Low Level Radioactive Waste Policy Act Amendments, and therefore authorized continued access to South Carolina facilities for New York generators of low level radioactive waste. Letter, Jerry Griepentrog, et al. to Mario M. Cuomo, January 28, 1991 (attached).

Sincerely yours



Donald P. Irwin  
Counsel for Long Island  
Lighting Company

Attachment

cc: Edwin J. Reis, Esq.  
Mr. Stewart M. Brown  
The Hon. Samuel J. Chilk

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January 28, 1991

The Honorable Mario M. Cuomo  
Governor  
Executive Chamber  
State Capitol  
Albany, New York 12224

Dear Governor Cuomo:

Thank you for your letter of December 6 to our respective Governors, the documentation provided by your staff regarding progress on development of a permanent low-level radioactive waste disposal facility in New York, and your personal assurances referenced below.

We are pleased to note your aggressive posture in dealing with those legislators attempting to derail the facility development process. As you stated, "Some legislators suggested that I suspend the activities of the state Siting Commission. In effect, those legislators were asking me to break the law. I rejected this suggestion."

As you are now aware, the Northern District Court of New York dismissed New York's lawsuit challenging the constitutionality of the 1985 Low-Level Radioactive Waste Policy Amendments Act. Hopefully, in accordance with your comment, "Until and unless the Congress or the courts remove this responsibility from New York, we will continue to fulfill our responsibilities under federal law in preparing for the timely management of LLRW generated within our borders," energy and resources that were to be used in the litigious process can be rechanneled to the site development process.

We are also pleased to see that after the 1990 amendments to the state's low-level waste management act, the act continues to mandate the development of disposal capacity. As you explained, "Our response was to modify, not abandon, the state's Low-Level Radioactive Waste Management Act to provide more effective communication and public participation and to establish a mechanism for independent scientific and technical review." However, Nevada, South Carolina and Washington remain concerned about the additional time it will take to implement new provisions of the state statute.

We have noted that New York expected to collect over 40 million dollars by January 1, 1991, and to have earned over 3 million dollars in interest. In addition, the State has appropriated nearly 5.6 million dollars for the site development process, and 800,000 dollars in 1990 to study longer-term storage capability. While the successful interim management of waste after 1993 is essential, long-term storage should not be considered an alternative to permanent disposal capability.

The Honorable Mario M. Cuomo  
Governor, State of New York  
January 28, 1991  
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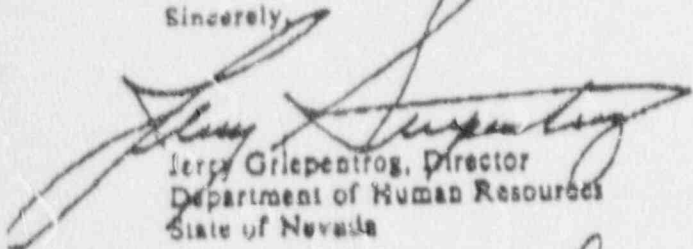
Furthermore, based on conversations with your staff, we understand that New York's previous site development efforts have provided data, analyses and other information which significantly will contribute to the completion of new siting activities.

Based on the above, it is determined that New York is currently in compliance with the Act and access to our disposal facilities for New York generators is permitted at this time.

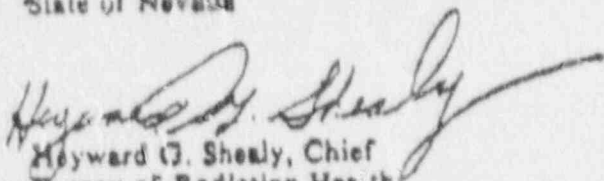
As sited states charged with the responsibility to monitor the facility development progress of unsited states and compacts, we are aware of the difficulties faced by state and local officials inherent to the facility development process. It is for this very reason that strong ongoing leadership is required from your office to ensure your State's low-level radioactive waste does not become an involuntary burden on other states.

This is particularly important in New York, since results achieved to date have not been sufficient to keep pace with facility development progress in the vast majority of other states and compacts. Consequently, it will be necessary to closely monitor the ongoing site development efforts in New York to ensure your state's efforts to meet the requirements of federal law comport with interim and temporary access to our disposal facilities.

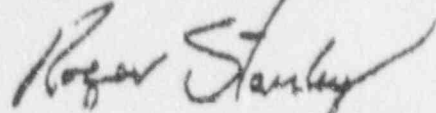
Sincerely,



Jerry Gripenfog, Director  
Department of Human Resources  
State of Nevada



Hayward G. Shealy, Chief  
Bureau of Radiation Health  
Department of Health and  
Environmental Control  
State of South Carolina



Roger Stanley, Program Manager  
Nuclear and Mixed Waste Management Program  
Department of Ecology  
State of Washington

JG/HS/RS:dr