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September 22, 1994

DOCKET NUMBER
PROPOSED RULE PR 61
(59FR39485)

The Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

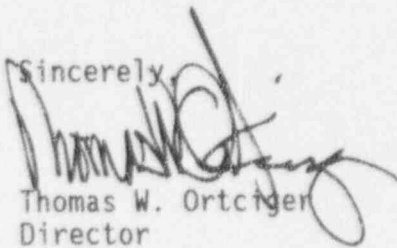
Re: RESPONSE TO ADVANCE NOTICE OF PROPOSED RULEMAKING (ANPRM)

Dear Mr. Bangart:

The Illinois Department of Nuclear Safety (Department) hereby submits its comments on the above-identified ANPRM transmitted to the Department with Agreement States letter (SP-94-115). The letter requests comments on the ANPRM regarding land ownership requirements for LLW sites.

The Agreement States have, on various occasions both orally and in writing, requested NRC not to introduce changes to 10 CFR Part 61 at this time. The reason is that this could be a major impediment to progress by those states actively involved in developing new low-level waste disposal sites under the provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985. Maintaining stability of the regulatory basis for licensing of LLW sites is critical to the success of the current process. Further, it appears that the unique case involving the State of Utah and the Envirocare site was resolved satisfactorily. Any other cases of a similar nature that might arise may raise issues unique to that site or state and can likely be resolved on an ad hoc basis. Therefore, it appears unnecessary to proceed with any new regulatory changes at this time.

In general, the Department does not agree with making the proposed revisions at this time. Specific responses to the questions posed in the ANPRM are attached. If you have any questions regarding these comments, do not hesitate to call Wayne Kerr or Steve Collins at (217) 785-9947.

Sincerely,

Thomas W. Ortziger
Director

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cc: Richard L. Bangart, Office of State Programs, NRC
James Lynch, State Agreements Officer

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1. The Commission considers that an amendment to 10 CFR Part 61 as described in this ANPRM could facilitate the objectives of the Low-Level Radioactive Waste Policy Act of 1985, as amended, by allowing States additional flexibility in developing new low-level radioactive waste disposal facilities. Would this change be useful for other LLW disposal sites or is it likely that the Utah exemption was one of a kind? The NRC would specifically request Compacts and Agreement States to inform us if private ownership for any potential site in their region is possible or is precluded by State laws or other provisions.

Ans. It would not be useful. It is likely that Utah was one of a kind. If it is not one of a kind, then, as demonstrated by Utah, the Agreement States are fully capable of being flexible and developing solutions to their own problems.

Illinois regulations currently require state or federal ownership of this type of disposal site before the Department issues a license. See 32 Ill. Adm. Code 601.90(b).

We do not believe NRC needs to make any change in Part 61 to allow the host states additional flexibility in siting low level waste disposal facilities.

It could be useful for NRC to publish, as guidance, the items of information the NRC believes are needed to grant an exception to a land ownership requirement.

2. Would this change facilitate or hinder future licensing of LLW facilities?

Ans. Hinder. Maintaining the status quo on this Part of NRC's rules is felt to be absolutely necessary to success of the current siting and licensing process in the host states. The Agreement States have on several occasions in the last few years emphasized this point to the NRC. One of the fears expressed by opponents of the sites is that as soon as a location is agreed upon and/or licensed then NRC will change the rules and allow more or different sources of material to be acceptable for disposal at the site. Because the host states are or will be Agreement States, we believe the NRC should cooperate with these states in this matter as it appears the NRC's agreement with each of these states requires NRC to do.

3. Would this change have any adverse impacts on public health and safety and protection of the environment?

Ans. It could if it results in delays of the licensing of new sites by the states.

4. Would the responsible regulatory agency lose any control over the disposal site if it is not owned by the Federal or State government?

Ans. We think not. Although the land owner could always have more control, even if the land is State owned, the licensing agency is probably not the title holder. This does not seem to have a bearing on protection of health and safety or the environment issues in Illinois, but it may in other states.

5. Are there valid reasons why land ownership requirements for NRC-regulated disposal sites should be more restrictive than EPA-regulated hazardous waste, municipal waste, and Superfund facilities, where government ownership is not usually a requirement?

Ans. Yes. The EPA requirements are not strict enough. The EPA should look at the NRC rule for a model in this area. The EPA regulates materials that may stay hazardous forever as the materials have no radiological decay to render them no longer a hazard. Restricting such sites for only 100 years is ridiculous. The EPA needs improved criteria in this area that goes much further than land ownership. The question seems to indicate that the NRC would use the EPA requirements as a model. We hope this would not happen.

6. How would private ownership affect liability for a disposal site?

Ans. It could provide another liable party to any proceeding involving actions involving cleanup, closure, or termination of license provisions, especially financial surety.

7. Would States' concerns about assuming liability for a disposal site be alleviated by this proposal?

Ans. No.

8. Would deletion of the State or Federal ownership requirement eliminate governmental liability under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) for releases from the site and, if so, does this change have any adverse impacts on public health and safety and protection of the environment, including after the active institutional control period?

Ans. No.

9. Should the NRC consider allowing a site owner to be only the licensee, or broaden the proposal to allow other private ownership?

Ans. No. Do not make any such requirement. The question indicates a lack of understanding about the way some sites may be licensed to operate. The ownership of an operating site may be by the State or federal government or a private land owner with the licensee being a private company operating under a license with the State (or possibly the NRC) and probably under a contract to the land owner. If private ownership is allowed after the closure of the site, then special restrictions should apply.

10. Should there be a time period after which the licensee can request termination of the license, even though the land might remain in private ownership?

Ans. Yes. Termination of the license does not necessarily mean the end of all control of the site. Land use restrictions and monitoring requirements could be imposed after termination of the license. As long as perpetual care funds are set aside and a responsible agency is charged with performing monitoring, land ownership is not critical.

11. If the NRC were to implement this proposal, are the surety requirements contained in 10 CFR Part 61, Subpart E, sufficient?

Ans. We believe they probably are. However, unless the state actually notifies the NRC that it intends to transfer the title and custody of the site to the federal government, the state should have the flexibility to handle financial surety any way it wants to. There is no need to impose NRC's methods on the state unless the site will be transferred to the federal government.

12. Under 61.80(e), all records are to be transferred to Federal and/or State agencies at the time of license termination. If the license remains in effect during the active institutional control period (licensee is site owner), would there be a need for this records transfer?

Ans. If the licensee would maintain a staffed office for the records at a location not far from the licensed facility, records transfer to a government agency would not need to occur until the end of the active institutional control period when the license would be terminated. If the licensee would not maintain an accessible office for the records, then transfer to a government agency should be at the time the licensee completes active operations of closure and is preparing to begin the active institutional control period.