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September 21, 1994

Mr. John C. Hoyle, Acting Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dear Mr. Hoyle:

Thank you for the opportunity to comment on the NRC's consideration of amending its regulations to allow private ownership of low-level radioactive waste facility sites as an alternative to the current requirement for Federal or State ownership.

Comments offered on the twelve questions included in the notice of proposed rulemaking as they appeared in the Federal Register on August 3, 1994, are as follows:

1. New Mexico has received no indication that there is anyone potentially interested in pursuing private licensing for a low-level waste disposal facility in New Mexico. New Mexico believes that quite possibly the Utah exemption (i.e. Envirocare) might be one of a kind. It is the considered opinion of Radiation Licensing and Registration Section technical staff that disposal of low-level radioactive waste at a few properly designed, built and operated sites is far preferable to extended storage at potentially thousands of generating sites across the nation.
2. Private land ownership would undoubtedly facilitate the licensing of a greater number of low-level radioactive waste sites.
3. This change would not necessarily have adverse impacts on public health and safety and environmental protection if land use controls are stringently enforced to 10 CFR Part 61 standards.
4. There would not necessarily be any loss of regulatory control over a low-level radioactive waste site if it is not owned by the Federal or State government. Regulatory requirements could remain the same regardless of land ownership. However, private ownership default would probably leave the long-term care and responsibility of the site to states or the NRC as the regulatory agencies responsible. Proliferation of such sites could adversely impact Federal and State budgets in "cleaning up" after private business ventures which do not work.

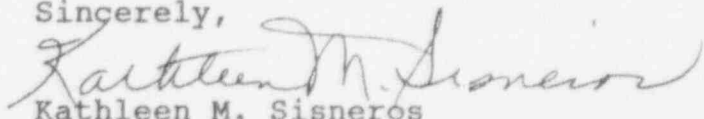
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5. There are no valid reasons why land ownership requirements for NRC-regulated disposal sites should be more restrictive than EPA-regulated hazardous waste, municipal waste and superfund facilities. Proper regulatory control is the issue, not which regulatory entity is exercising regulatory authority. All requirements imposed should adequately address the waste constituents being disposed.
6. Private ownership would not necessarily affect liability issues at a low-level radioactive waste disposal site if proper safeguards such as financial surety arrangements are maintained.
7. If proper safeguards such as financial surety arrangements, including possible continued care funds, were taken to assure that liability issues were adequately addressed, the State would have no problem with such issues.
8. Deletion of the Federal or State ownership requirement would not eliminate governmental liability under CERCLA for any releases at the site.
9. Only the site owner should be considered the licensee for accountability reasons.
10. With proper controls and conditions for land use or activity there could be a license termination request even though the land might remain in private ownership.
11. The surety requirements contained in 10 CFR Part 61, Subpart E need to be made more specific to adequately cover site cleanup costs to include groundwater and soil remediation.
12. Records need not be transferred to Federal and/or State agencies while the license remains in effect during the active institutional control period. Access to such records by Federal/State regulatory agencies should be allowed at all times.

Should you have any questions, please call me at (505) 827-2834.

Sincerely,



Kathleen M. Sisneros  
Director  
Water and Waste Management Division

cc: Docketing and Service Branch  
U.S. Nuclear Regulatory Commission