

DEPARTMENT OF HEALTH SERVICES

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DOCKETED  
USNRC



'94 SEP 26 P12:35  
September 16, 1994

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OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

The Secretary of the Commission  
Attention: Docketing and Service Branch  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555

Dear Secretary:

NRC ADVANCE NOTICE OF PROPOSED RULEMAKING (ANPR) - LAND OWNERSHIP  
REQUIREMENTS FOR LLRW DISPOSAL FACILITIES

This is in response to the request for comments on the subject ANPR. Edgar D. Bailey, Chief of the California Department of Health Services' (DHS) Radiologic Health Branch, has already voiced his opposition to the changes described in the ANPR in his letter of August 16, 1994. This letter supports Mr. Bailey's position, and represents the concerns of DHS' Low-Level Radioactive Waste (LLRW) Program.

The proposed rule would revise Section 61.59(a) of 10 CFR, Part 61, to allow private ownership of land used for a regional LLRW disposal facility. This change could have a severe negative effect on the siting effort in California, where a site for the facility has already been selected.

Site opponents could claim that, since only state or federally owned land was considered during the site selection phase, the selected site could not be the theoretically "ideal" site for the facility, even though the site was deemed to exceed the performance objectives of 10 CFR, Part 61. This could provide them with a new basis on which to challenge the environmental impact analysis for the project in court. Under the best of circumstances, such new legal challenges would result in a delay of three to four years while the issue is litigated. If the State lost the court case and was ordered to perform a new siting study, the entire siting process would have to be redone. This would unravel all the progress made over the past ten years on siting a disposal facility, and waste all the money (estimated at more than \$50 million) spent on the effort to date. Under these circumstances, it would be difficult to impossible for the State of California to construct a disposal facility as envisioned under 10 CFR, Part 61.

The problem would be exacerbated because in 1983 the California Legislature followed the federal lead in 10 CFR, Part 61, and codified a requirement that the California facility be located on land owned by the federal or state government. Opponents could say that California law is inconsistent with federal guidance and could use that argument to cause further delay.

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We therefore strongly urge you not to proceed with the proposed change to Section 61.59(a). The effect of such a change would be to undercut California's effort to comply with 10 CFR, Part 61. Please call me if you have any questions regarding this matter.

Sincerely,

A handwritten signature in cursive script, reading "Harvey F. Collins".

Harvey F. Collins, Ph.D., P.E., Chief  
Division of Drinking Water and  
Environmental Management