

SECRET NUMBER  
PROPOSED RULE PR 61  
(59FR 39485)



DOCKETED  
USNRC

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# RADIOACTIVE WASTE MANAGEMENT ASSOCIATES

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October 3, 1994

OFFICE OF SECRETARY  
DOCKETING & SERVICE  
BRANCH

Docketing and Service Branch  
Secretary of the Commission  
US Nuclear Regulatory Commission  
Washington, D.C. 20555

Re: ANPR, Land Ownership Requirements  
for Low-Level Waste Sites

Dear Secretary:

We would like to submit the enclosed comments in response to the advanced notice of proposed rulemaking regarding land ownership requirements for low-level waste sites, RIN 3150-AE88. Though these comments are ours and not associated with our clients, Radioactive Waste Management Associates is critically evaluating proposed radioactive waste facilities in North Carolina, Texas, California and Nebraska. We have also worked in Illinois and Connecticut on the same issues. We are working at several sites involved in remediation, such as Maxey Flats, Kentucky and Maywood and Wayne, New Jersey.

Please include us on the mailing list for future draft and final regulations on this issue. Thank you.

Sincerely yours,

Marvin Resnikoff

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**Comments on Proposed Rule Change:  
Land Ownership Requirements for Low-Level Waste Sites  
by  
Radioactive Waste Management Associates  
September 30, 1994**

The Nuclear Regulatory Commission (NRC) currently requires federal or state ownership of radioactive waste sites [10 CFR Part 61.59(a)]. In 1993, the NRC found acceptable an exemption from this requirement granted by the State of Utah to Envirocare of Utah, Inc., in order to facilitate the licensing process. Following a petition from US Ecology, the agency is considering a rule change to allow private ownership without the need for exemptions. The requirement for government ownership was issued "to assure control of the disposal site after closure, and thereby reduce the potential for inadvertent intrusion, better ensure integrity of the site, and facilitate monitoring of site performance."<sup>1</sup> We agree that these are extremely important considerations, and question whether indeed these concerns would be well served by private ownership.

The question of who owns radioactive waste disposal sites is clearly less important than the manner in which the sites are operated and decommissioned. However, private ownership could have important implications both for operation and for long-term land use. In the long term, private ownership could increase the likelihood that waste sites will be used in ways incompatible with public health. In the short term, private ownership might marginally increase radioactive waste disposal licensees' incentives to operate safely by increasing their financial liability. However, private ownership does not guarantee financial responsibility, and NRC regulations regarding financial assurances should be improved whether or not site ownership rules are changed.

One of the unfortunate consequences of radioactive waste disposal is that the land in which the waste is disposed will very likely remain unsuitable for any productive use for many centuries. After a disposal facility is closed, a private entity will have no incentive to continue to own an unproductive piece of land, particularly one representing a potential liability. The most attractive options will be either to use the land, which would be unsafe, or to transfer it to the state or federal government. The latter case shows that any political

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<sup>1</sup> Federal Register Notice 7590-01-P, Advance notice of proposed rulemaking: Land ownership requirements for low-level waste sites.

benefits of allowing private ownership may be only temporary, while the former shows the danger of the proposed rule change. In the event that the land in question is not transferred to public ownership, zoning restrictions and the addition of special restrictive covenants to the land deed records may help to prevent inappropriate future land use. However, it is doubtful that these restrictions would be effectively enforced for hundreds of years. Even government ownership of waste sites does not guarantee control of the sites over a period of centuries, but it should convey better control than deed and zoning restrictions would.

On the other hand, licensee ownership of disposal sites might have a positive effect on public health in the short term if it increases the licensees' financial liability and thus their incentives to operate the sites safely. The need to increase the financial liability of waste site operators is illustrated by the case of US Ecology and its disposal facility in Maxey Flats, Kentucky. The Commonwealth of Kentucky had to buy out the operating rights and hold the licensee harmless from future liability in order to close down the Maxey Flats site. In effect, US Ecology has disappeared from the scene. By contrast, the exemption granted to Envirocare specifies that the company remain site owner in Clive, Utah for 100 years after its facility's closure. If the facility requires clean-up, the company will still be in the picture. If Envirocare perceives a consequent increase in its liability for clean-up or personal damages, it may devote more resources to protecting public safety. An obvious loophole lies in the possibility that Envirocare could declare bankruptcy at the end of the operating life of the facility. As part of the Utah exemption, the NRC also required the establishment of a State-administered trust account, which would serve to insure against this possibility, if maintained at an appropriate level.

Although private ownership may marginally increase waste disposal licensees' interest in protecting public health and the environment, it certainly does not guarantee responsible behavior. Private ownership of chemical waste sites has been a failure. These sites regularly fall under Superfund requirements and remediation generally languishes as the operators and waste generators fight over who will pick up the tab. As with radioactive waste sites, sufficient money has never been put aside to maintain and decommission chemical landfills.

Since private ownership could lead to only a marginal increase in financial responsibility and attention to public safety, if any, it is important that the NRC's rules be improved to better regulate licensees' financial liability. Once operating revenues cease, waste site operators tend to have little capital and less incentive to properly maintain and repair waste facilities. Further, without an active management presence, insurers will not

cover non-operating facilities. Although 10 CFR Part 61, Subpart E does state that licensees must "provide assurance that sufficient funds will be available to carry out disposal site closure and stabilization," liability for clean-up in the event of operating or stabilization failure should be specifically addressed. The establishment of long-term maintenance and decommissioning funds along the lines of the one specified in the Utah exemption should be required. Similarly, financial assurance for third party bodily injury and property damage should be addressed. The NRC must put more resources and commitment into the enforcement of its surety requirements.

In conclusion, while private ownership of radioactive waste sites might marginally increase licensees' incentive to protect public health and the environment, the experience of privately owned chemical waste sites is not one of financial responsibility. Furthermore, in the long term, private ownership of decommissioned waste sites could increase the likelihood that such sites would be used in ways incompatible with public health. For these reasons, we recommend that the NRC maintain the requirement that waste sites be owned by the federal or state governments. Finally, whether or not the agency maintains this requirement, it should improve its financial surety requirements to better ensure funding of clean-up costs.