AC 50-1
PDR

May 16, 1996

MEMORANDUM TO: David L. Meyer, Chief
Rules Review and Directives Branch
Division of Freedom of Information and Publications Services
Office of Administration

FROM: Thomas O. Martin, Chief 151
Regulation Development Branch
Division of Regulatory Applications
Office of Nuclear Regulatory Research

SUBJECT: WITHDRAWAL OF PROPOSED AMENDMENTS TO 10 CFR 150.15 -- REASSERTING NRC'S AUTHORITY FOR APPROVING ONSITE LOW-LEVEL WASTE DISPOSAL IN AGREEMENT STATES

In a May 8, 1996, Staff Requirements Memorandum (attached), the Commission approved the staff's proposed action to withdraw the formal rulemaking to revise 10 CFR 150.15. The SRM directed the staff to discontinue the rulemaking effort.

Please implement the Commission's action by arranging for publication of the attached Federal Register notice.

Also attached is a Congressional letter package for transmittal to OCA and two copies of the public announcement for transmittal to OPA.

Attachments:
1. SRM
2. Federal Register notice
   + 3 copies and disk
3. Congressional Letters
4. Public Announcement
   + 2 copies

Distribution:
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ATTACHMENT 1

SRM

Action: Morrison, RES

Cys: Taylor
Milhoan
Thompson
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JMate, RES
MLesar, ADM

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
SECRETARY

May 8, 1996

MEMORANDUM TO: James M. Taylor
Executive Director for Operations

FROM: John C. Hoyle, Secretary

SUBJECT: STAFF REQUIREMENTS - SECY-96-078 - WITHDRAWAL OF PROPOSED AMENDMENTS TO 10 CFR 150.15, REASSERTING NRC'S AUTHORITY FOR APPROVING ONSITE LOW-LEVEL WASTE DISPOSAL IN AGREEMENT STATES

The Commission has approved discontinuance of the current rulemaking effort for 10 CFR 150.15 and publication of a notice in the Federal Register announcing the withdrawal of the proposed amendments.

cc: Chairman Jackson
Commissioner Rogers
Commissioner Dicus
OGC
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)

SECY NOTE: THIS SRM, SECY-96-078, AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS FROM THE DATE OF THIS SRM.

ATTACHMENT 2

FEDERAL REGISTER NOTICE

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

RIN 3150-AC57

Reasserting NRC's Authority for Approving Onsite Low-Level Waste Disposal in Agreement States; Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a notice of proposed rulemaking that would have reasserted the NRC's jurisdiction in Agreement States over the disposal of licensed material generated and disposed of at nuclear reactor sites. The proposed rule would also have clarified the jurisdiction over disposal of noncritical waste quantities of special nuclear material at reactors and fuel cycle facilities.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6202.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1988 (53 FR 31880), the Commission published a notice of proposed rulemaking in the Federal Register entitled "Reasserting NRC's Authority for Approving Onsite Low-Level Waste Disposal in Agreement States." This rule would have reasserted the NRC's jurisdiction in the Agreement States over the disposal of low-level radioactive waste generated and disposed of at reactor sites. The proposed rule would also have clarified the jurisdiction over the disposal of noncritical waste quantities of special nuclear material at fuel cycle facilities. The NRC would have authorized this disposal under 10 CFR 20.302, but 10 CFR Part 20, "Standards for Protection Against Radiation," was revised in May 1991 (56 FR 23360). The applicable regulation is now 10 CFR 20.2002.

The purpose of the proposed rule was to provide for a more centralized and consistent regulatory review of all onsite waste management activities and to avoid duplication of regulatory effort by the NRC and the Agreement States. The uniform review process that would result from the proposed rule was intended to provide greater assurance that onsite disposal of radioactive material will not present a health hazard and that the disposal of this waste in this manner will not unnecessarily complicate or delay decommissioning.

As a result of publishing the proposed rule in the Federal Register, the NRC received 49 comment letters. Twelve commenters (24 percent) favored the proposal, 37 commenters (76 percent) opposed the proposal. Comments were submitted by private citizens, Agreement and Non-Agreement States, nuclear

utilities, nuclear utilities' representatives, and various conservation and public interest groups. The vast majority of the comments favoring the proposal were from nuclear utilities and their representatives. Comments opposed to the proposal came from private citizens, Agreement and Non-Agreement States, and conservation and public interest groups. Nineteen of the commenters questioned the need for the proposed rule, six commenters wanted the States' participation in the approval process to be specified, and a few States questioned the NRC's authority to promulgate the rule. The remaining commenters were concerned with better definitions of the protected and exclusion areas, the type of waste to be covered by the rule, existing onsite disposal, and the impact on regional low-level waste disposal facilities. Some States commented that the Agreement States were more familiar with local conditions and that their requirements were more strict than the NRC's. Of the 10 Agreement States that commented, 9 States were opposed to the amendments. The remaining Agreement State that commented supported the rule but reserved the right to participate in the approval process with full review privileges and expected their concerns to be addressed.

As a result of the public comments received and the relatively low hazards associated with onsite disposal of low-level waste radioactive material, the NRC reevaluated the merits of the proposed rule. In the 7 years since this rulemaking was originally proposed, there have been a number of approvals granted by Agreement States for onsite disposal of low-level waste material under the equivalent of 10 CFR 20.2002 (successor to 20.302). The NRC staff is not aware of any problems with the Agreement States' approvals of any onsite burials of low-level waste material.

Based on the comments received, the relatively low hazards associated with onsite disposal of this type of radioactive material, and current experience with disposals, the NRC has reevaluated the issues and concluded that it is not necessary to reassert its regulatory jurisdiction over onsite disposal at reactor sites in the Agreement States.

Therefore, the proposed rule is not required and is being withdrawn. Withdrawal of the proposed rule does not affect the current NRC jurisdiction over disposal of special nuclear material by reactor or fuel cycle licensees. With the withdrawal of the proposed rule, the Agreement States will maintain jurisdiction over the disposal of low-level radioactive waste on nuclear reactor sites.

Dated at Rockville, Maryland, this _____ day of _____, 1996.

For the Nuclear Regulatory Commission.

_____
John C. Hoyle,
Secretary of the Commission.

ATTACHMENT 3

CONGRESSIONAL LETTERS

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In the near future, the U. S. Nuclear Regulatory Commission (NRC) intends to publish in the Federal Register the enclosed notification of withdrawal of the proposed amendment to the Commission's rules in 10 CFR Part 150 that was published in the Federal Register on August 22, 1988 (53 FRN 31880). The proposed changes would have reasserted NRC authority over the disposal of low-level radioactive waste at nuclear reactor and fuel facility sites, and disallowed continuance of the practice of Agreement States authorizing such disposal. In consideration of public comments received, and the safety of this practice over the past 7 years since the proposed rule was published, the NRC no longer believes that this rule change is needed.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Bob Graham

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
  Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

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Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Bob Graham

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*See previous concurrences

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Name:	JMate*	TMartin*	BMorris*	DMorrison	DKRathbun
Date:	5/8/95	5/17/95	03/21/96	3/28/96	/ /96
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Offc:	RDB:DRA	RDB:DRA	D:DRA:RES	D:RES	OC
Name:	JMate*	TMartin*	BMorris	DMorrison	DKRathbun
Date:	5/8/95	5/17/95	5/24/96	/96	/96
Copy:	Yes No	Yes No	Yes No	Yes No	Yes No

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In the near future, the U. S. Nuclear Regulatory Commission (NRC) intends to publish in the Federal Register the enclosed notification of withdrawal of the proposed amendment to the Commission's rules in 10 CFR Part 150 that was published in the Federal Register on August 22, 1988 (53 FRN 31880). The proposed changes would have reasserted NRC authority over disposal of low-level radioactive waste at nuclear reactor and fuel facility sites, and disallowed continuance of the practice of Agreement States authorizing such disposal. In consideration of public comments received, and the safety of this practice over the past 7 years since the proposed rule was published, the NRC no longer believes that this rule change is needed.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Frank Pallone

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

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Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Frank Pallone

Distribution:
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*see previous concurrences

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Date:	5/8/95	5/17/95	03/21/96	3/28/96	/ /96
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*see previous concurrences

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Name:	JMate*	TMartin*	BMorris	DMorrison	DKRathbun
Date:	5/8/95	5/17/95	5/21/96	/ /96	/ /96
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OFFICIAL RECORD COPY

ATTACHMENT 4

PUBLIC ANNOUNCEMENT

NRC WITHDRAWS PROPOSED RULE ON AGENCY AUTHORITY OVER LOW-LEVEL WASTE AT REACTOR SITES IN AGREEMENT STATES

The Nuclear Regulatory Commission has withdrawn a proposed rule that would have reasserted NRC's jurisdiction over low-level radioactive wastes generated and disposed of at reactor sites located in agreement states.

The agency is taking this action after analyzing public comments - most of which opposed the proposal - and after considering the relatively low hazards associated with on-site disposal of low-level radioactive waste. NRC and comparable state regulations already require that such on-site waste disposal be authorized on a case-by-case basis.

It was in 1988 that NRC proposed to reassert its authority over low-level waste generated and disposed of at reactor sites within agreement state borders. The proposed rule also would have clarified the jurisdiction over the disposal of non-critical waste quantities of special nuclear material at fuel cycle facilities. (Agreement states, which now number 29, are so named because they have agreements with NRC to regulate the uses of radioactive byproduct and source materials, including low-level radioactive wastes. Special nuclear material includes plutonium and certain types of uranium which, by law, are federally regulated and will remain under NRC jurisdiction).

Earlier, NRC believed the reassertion of its authority was necessary for NRC to retain control over the decommission process. The NRC staff reconsidered the proposed action after reviewing the public comments and the relatively low hazards associated with onsite disposal of this type of radioactive material, and current experience.

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Action: Morrison, RES

Cys: Taylor
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JMate, RES
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE
SECRETARY

May 8, 1996

MEMORANDUM TO: James M. Taylor
Executive Director for Operations

FROM: John C. Hoyle, Secretary

SUBJECT: STAFF REQUIREMENTS - SECY-96-078 - WITHDRAWAL OF PROPOSED AMENDMENTS TO 10 CFR 150.15, REASSERTING NRC'S AUTHORITY FOR APPROVING ONSITE LOW-LEVEL WASTE DISPOSAL IN AGREEMENT STATES

The Commission has approved discontinuance of the current rulemaking effort for 10 CFR 150.15 and publication of a notice in the Federal Register announcing the withdrawal of the proposed amendments.

cc: Chairman Jackson
Commissioner Rogers
Commissioner Dicus
OGC
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)

SECY NOTE: THIS SRM, SECY-96-078, AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS FROM THE DATE OF THIS SRM.

POLICY ISSUE
(Notation Vote)

April 15, 1996 SECY-96-078

FOR: The Commissioners

FROM: James M. Taylor, Executive Director for Operations

SUBJECT: WITHDRAWAL OF PROPOSED AMENDMENTS TO 10 CFR 150.15, REASSERTING NRC'S AUTHORITY FOR APPROVING ONSITE LOW-LEVEL WASTE DISPOSAL IN AGREEMENT STATES

PURPOSE:

To obtain Commission approval for publication in the Federal Register of a notice to withdraw the proposed amendments to 10 CFR 150.15.

SUMMARY:

In July 1988, the Commission approved the publication in the Federal Register of proposed amendments to reassert NRC's authority in the Agreement States for approving onsite disposal of licensed material as specified in 10 CFR 20.302[1] at reactors and facilities licensed under 10 CFR Parts 50 and 70. This rule change would also have clarified that the NRC would retain jurisdiction for approval of the disposal at these facilities of non-critical waste quantities of special nuclear material. This reassertion of NRC's authority would ensure greater NRC control over the decommissioning process. Under 10 CFR Part 150 of the Commission's regulations, the states retained authority over onsite disposal of licensed material at these sites. Currently, the Agreement States exercise this authority under the equivalent of 10 CFR

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[1] The Commission's 1991 revisions to 10 CFR Part 20 maintained the provisions of § 20.302 in a very similar form in 10 CFR 20.2002 (56 FR 23360; May 21, 1991). NRC requirements retained the provision for the licensee to justify disposal by submitting the same information as was required in 10 CFR 20.302.

CONTACT:
Joseph Mate, RES
415-6202

NOTE: TO BE MADE PUBLICLY AVAILABLE WHEN THE FINAL SRM IS MADE AVAILABLE

20.2002 (successor to 20.302) of the Commission's regulations. However, these regulations may differ slightly from state to state. 10 CFR 20.2002 does not authorize NRC to approve burial requests made by 10 CFR Part 50 or 70 licensees in the Agreement States. Furthermore, the proposed rule would:

(1) Provide for a more centralized and consistent regulatory review of all onsite waste management disposal activities;

(2) Avoid duplication of regulations among NRC and Agreement States.

The proposed amendments to 10 CFR Part 150 were published for a 90-day public comment period in the Federal Register on August 22, 1988 (53 FR 31880). A total of 49 comments were received. Twelve commenters (24%) favored the proposed amendments and 37 commenters (76%) were opposed to the amendments. The vast majority of the comments favoring the proposal were from the nuclear utilities and nuclear utility representatives, while those opposed to the amendments came mainly from private citizens, Agreement and Non-Agreement States, and conservation and public interest groups. A summary of the comments on the proposed rule is presented in Enclosure 1.

As a result of the comments received, the relatively low hazards associated with onsite disposal of this type of radioactive material, and current experience, the NRC staff has reevaluated the issues and concludes that it is no longer necessary to reassert NRC jurisdiction over onsite disposal of licensed material in the Agreement States. In the 7 years since this rulemaking was originally proposed, there have been a number of approvals granted by Agreement States for onsite disposal of low level waste material. The NRC staff is not aware of any problems with the Agreement States' approvals of any onsite burials of low-level waste material. Based on the recent past, the NRC staff has confidence in the Agreement States' programs and believes the Agreement States are capable of effectively performing their own onsite disposal reviews. In addition, the NRC staff has determined that additional clarification is not needed regarding the disposal of special nuclear material at these facilities. The NRC will retain jurisdiction in this area.

BACKGROUND:

Under the Commission's regulations in Part 150, Agreement States have authority to approve the onsite disposal of radioactive material at facilities licensed under 10 CFR Parts 50 or 70.

The need to integrate onsite waste disposal with decommissioning decisions led the NRC staff to question the appropriateness of Agreement State authorization of onsite disposal at nuclear power reactor sites in accordance with comparable State regulations. The NRC staff was concerned that an onsite burial authorized by an Agreement State could complicate and delay decommissioning and release of a power reactor site. This concern led to the proposal in 1988 of an amendment to 10 CFR 150.15 under the authority of Section 274(c)(4) of the Atomic Energy Act. The latter provides that NRC may retain authority for disposal of such byproduct, source, or special nuclear material as the Commission determines should not be disposed of without a license from the Commission.

The requirements in 10 CFR 20.2002 provide for requests by licensees to dispose of licensed radioactive material in a manner not otherwise authorized by the NRC regulations and provide for a regulatory mechanism for reviewing and approving licensee-specific waste disposal requests. Under this provision, licensees can request authorization to dispose of radioactive material by burial either onsite or offsite at locations other than disposal sites licensed under 10 CFR Part 61 or compatible Agreement State requirements. The NRC has not generally considered 10 CFR 20.2002 to be a mechanism to approve onsite or offsite disposal for generic waste streams generated by a large number or variety of facilities or for waste generated on a continuing basis. Despite the burden of having to demonstrate that the proposed disposal will provide adequate protection, licensee incentives to use the provision in 10 CFR 20.2002 include economics (e.g., avoiding costs associated with shipment and burial of wastes at licensed disposal facilities), conservation of limited burial capacity at licensed disposal facilities for more hazardous radioactive wastes, and reduction of exposures to workers to levels as low as reasonably achievable (ALARA). These requests can be approved by NMSS, NRR, the NRC Regional Offices, or by the individual Agreement States.

In accordance with the present 10 CFR 20.2002, any such request must be accompanied by specific data and analyses sufficient for the decision maker (NRC staff or Agreement State) to determine whether such disposal would have an adverse effect on the health and safety of the public or the environment. In addition, 10 CFR 20.2002 does not explicitly limit the quantity or concentration of the radioactive material. Past practices have limited approvals to very small quantities of radioactive material and correspondingly low to very low potential doses to members of the public. Disposals of waste approved under these provisions have included radioactive sludge from sanitary sewers and storm drains, soils contaminated by spills and leaks, dredging from discharge canals and settling ponds, and miscellaneous laboratory wastes. Maximum potential doses are generally much less than NRC's public dose limits as defined in 10 CFR 20.1301. Licensees are required to maintain records of these disposal activities that are available for NRC inspection.

NRC received 49 letters of comment in response to the proposed rule. Nineteen of the commenters questioned the need for this rule, six commenters wanted the States' participation in the approval process to be specified, and a few States questioned NRC's authority to promulgate this rule. The remaining commenters were concerned with better definitions of protected and exclusion areas, the type of waste to be covered by the rule, existing onsite disposal, and the impact on regional low-level waste disposal facilities. Some States commented that Agreement States are more familiar with the local conditions, and their requirements were more strict than NRC's. Of the 10 Agreement States that commented on the proposed amendments, 9 States were opposed to the amendments. The remaining Agreement State (South Carolina) supported the proposed rule because they believed it would avoid duplication of effort by the NRC and the Agreement States. However, South Carolina also reserved the right to participate in all approval processes with full review privileges and expected their concerns would be addressed by the licensee. Based on all

these negative public comments, the NRC staff reconsidered the merits of the rule.

DISCUSSION:

In the 7 years since this rulemaking was originally proposed, there have been a number of approvals granted by Agreement States for onsite disposal of radioactive material. Each request of this nature processed by the NRC staff would require approximately 1 staff-week of effort, depending on the type and nature of the burial request. Reviewing these requests in the future would represent an unnecessary FTE expenditure. Additionally, the NRC is not aware of any problems with Agreement State approvals in these, or other instances.

Due to the inherently very low radioactivity level of the wastes involved, the success with the implementation of these provisions by the Agreement States, the potential impact on NRC resources, and the comments raised by the Agreement States and others, the staff has reconsidered its position and now concludes that it is no longer necessary to reassert NRC jurisdiction over the disposal of licensed material in the Agreement States. The disposal of these wastes in the present manner should not complicate or delay decommissioning and does not pose a sufficient hazard to reserve licensing authority to the Commission in accordance with Section 274(c) of the Atomic Energy Act.

As a result of the above considerations, the NRC staff now believes that Agreement States should retain the authority to approve the disposal of waste in accordance with regulations that are compatible with the requirements in 10 CFR 20.2002. Withdrawal of the proposed rule does not affect the current NRC jurisdiction over disposal of special nuclear material at reactor or fuel facility sites.

RESOURCES:

Sufficient resources have been budgeted by RES to cover the withdrawal actions proposed herein. No additional RES resources will be necessary once this rulemaking has been withdrawn. NMSS resources may be required in the future to develop consistent guidance to be used by the States to perform onsite disposal reviews. However, this will be reconciled in conjunction with the strategic assessment and staff recommendations as a follow up to SECY-95-201.

COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

RECOMMENDATION:

That the Commission:

1. Approve:
    a. The discontinuance of the current rulemaking effort for 10 CFR 150.15,

b. The Federal Register notice for withdrawing the proposed amendments (Enclosure 2).

2. Note:

a. The ACNW, the ACRS and the CRGR are not being informed of this action because they previously chose not to review the proposed rule,

b. The appropriate Congressional committees will be informed of this action (Enclosure 3),

c. The NRC staff will directly notify licensees, State governments and interested parties to this action, and

d. That a public announcement will be issued (Enclosure 4).

James L. Milhoan for
James M. Taylor
Executive Director
for Operations

Enclosures: As Stated (4)

Commissioners' comments or consent should be provided directly to the Office of the Secretary by COB April 30, 1996.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT April 23, 1996, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

DISTRIBUTION:
Commissioners
OGC
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OIP
OCA
ACNW
ASLBP
EDO
SECY

SUMMARY OF COMMENTS

COMMENTS ON THE PROPOSED RULE

The Nuclear Regulatory Commission (NRC) received a total of 49 comment letters on the proposed amendments to 10 CFR 150.15. A total of 12 commenters (24 percent) favored the proposed rule while 37 commenters (76 percent) were opposed to the proposed rule. The vast majority of the comments favoring the proposed rule came from the nuclear utilities or their representatives. The main reason cited in the comments for supporting the proposed rule was it would ensure a uniform and predictable basis for onsite disposal and it would not conflict with the review or approval of future decommissioning activities. Comments that were opposed to the proposed rule came from public citizens, both Agreement and Non-Agreement States, and conservation and public interest groups. The main reasons given for opposing the proposed rule were (1) consistency with the Agreement States' current participation in the low-level radioactive waste (LLW) disposal process, (2) the stated belief that the NRC's proposed rule conflicted with the Low Level Waste Policy Amendments Act of 1985, and (3) the belief that the States can make better disposal decisions than the NRC for the most appropriate type of disposal considering site limitations, local environment, and local needs. A summary of the public comments is provided below.

1. Need For the Amendments: Nineteen commenters questioned the need for the NRC to reassert its authority over approval of onsite disposal in Agreement States. Some of the commenters suggested that the NRC should merely provide guidance to the Agreement States.

2. NRC's Authority To Adopt the Amendments: Two State agencies argued that the proposed rule extends beyond the authority of the NRC. Their comments are based partly on agreements between the Agreement States and the NRC that provide the Agreement States with regulatory jurisdiction over the disposal of LLW. One State commented that the NRC may terminate an agreement under Section 274(j) of the Atomic Energy Act only if it is necessary to protect the public health or safety, or if the State has not complied with the requirements of the law in its program. Fifteen other commenters also expressed concern that the proposed amendments appear to be contrary to the Low-Level Waste Policy Amendments Act of 1985 (LLW Policy Amendments Act) and to the rights of the regional compacts and the States to regulate the disposal of LLW generated within their borders. Another commenter stated that the LLW Policy Amendments Act assigns LLW disposal to the States and makes no distinction between "onsite" and "offsite" disposal.

3. Definition of the term "Radioactive Waste": Several of the commenters requested that the type of radioactive waste covered by the rulemaking be defined. Terms used in the proposed amendments to describe the types of waste to be approved for onsite disposal (e.g., LLW, slightly contaminated) led to confusion, particularly with regard to the nomenclature in the LLW Policy Amendments Act.

4. States' Participation in NRC Onsite Disposal Procedures: Six States indicated that, if the NRC were to proceed and promulgate the rule, the mechanism for the States' participation in the approval procedure should be specified.

5. Protected and Exclusion Areas and Site Boundaries at Licensed Nuclear Reactors: Three commenters indicated that the protected area is always within the exclusion area, and that reference to the protected area is confusing because it could be concluded that the NRC would require that onsite disposal should be made only within protected areas. Another commenter suggested that it would be even clearer to refer to disposal within the site boundary without reference to either protected or exclusion areas.

6. Existing Onsite Disposal Previously Authorized by Agreement States: Two commenters indicated that the NRC should address in the final amendment the question of approving existing onsite disposal areas previously authorized by the Agreement States.

7. Impact on the Regional LLW Disposal Sites: Three commenters indicated that the proposed rule would have the potential to deprive the regional LLW disposal facilities "... of a substantial part of the waste stream necessary to make them economically viable."

8. Responsibility for Decommissioned Sites: One commenter stated that it was not clear whether the NRC would assume responsibility for remedial care of the site if a post-decommissioning contamination problem occurred.

9. Conditions for Approval of Onsite Disposal: Several commenters suggested that the Agreement States should continue to approve applications for onsite disposal at nuclear plant sites, because the Agreement States are more familiar than the NRC with the local conditions and because their requirements were more stringent that the NRC's requirements. Other commenters indicated that a factor to consider is whether the Agreement States would be less likely to approve offsite disposal applications than the NRC.

FEDERAL REGISTER NOTICE

[7590-01-P]

NUCLEAR REGULATORY COMMISSION

10 CFR Part 150

RIN 3150-AC57

Reasserting NRC's Authority for Approving Onsite Low-Level Waste Disposal in Agreement States; Withdrawal

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC) is withdrawing a notice of proposed rulemaking that would have reasserted the NRC's jurisdiction in Agreement States over the disposal of licensed material generated and disposed of at nuclear reactor sites. The proposed rule would also have clarified the jurisdiction over disposal of noncritical waste quantities of special nuclear material at reactors and fuel cycle facilities.

FOR FURTHER INFORMATION CONTACT: Joseph J. Mate, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6202.

SUPPLEMENTARY INFORMATION:

Background

On August 22, 1988 (53 FR 31880), the Commission published a notice of proposed rulemaking in the Federal Register entitled "Reasserting NRC's Authority for Approving Onsite Low-Level Waste Disposal in Agreement States." This rule would have reasserted the NRC's jurisdiction in the Agreement States over the disposal of low-level radioactive waste generated and disposed of at reactor sites. The proposed rule would also have clarified the jurisdiction over the disposal of noncritical waste quantities of special nuclear material at fuel cycle facilities. The NRC would have authorized this disposal under 10 CFR 20.302, but 10 CFR Part 20, "Standards for Protection Against Radiation," was revised in May 1991 (56 FR 23360). The applicable regulation is now 10 CFR 20.2002.

The purpose of the proposed rule was to provide for a more centralized and consistent regulatory review of all onsite waste management activities and to avoid duplication of regulatory effort by the NRC and the Agreement States. The uniform review process that would result from the proposed rule was intended to provide greater assurance that onsite disposal of radioactive material will not present a health hazard and that the disposal of this waste in this manner will not unnecessarily complicate or delay decommissioning.

As a result of publishing the proposed rule in the Federal Register, the NRC received 49 comment letters. Twelve commenters (24 percent) favored the proposal, 37 commenters (76 percent) opposed the proposal. Comments were submitted by private citizens, Agreement and Non-Agreement States, nuclear

utilities, nuclear utilities' representatives, and various conservation and public interest groups. The vast majority of the comments favoring the proposal were from nuclear utilities and their representatives. Comments opposed to the proposal came from private citizens, Agreement and Non-Agreement States, and conservation and public interest groups. Nineteen of the commenters questioned the need for the proposed rule, six commenters wanted the States' participation in the approval process to be specified, and a few States questioned the NRC's authority to promulgate the rule. The remaining commenters were concerned with better definitions of the protected and exclusion areas, the type of waste to be covered by the rule, existing onsite disposal, and the impact on regional low-level waste disposal facilities. Some States commented that the Agreement States were more familiar with local conditions and that their requirements were more strict than the NRC's. Of the 10 Agreement States that commented, 9 States were opposed to the amendments. The remaining Agreement State that commented supported the rule but reserved the right to participate in the approval process with full review privileges and expected their concerns to be addressed.

As a result of the public comments received and the relatively low hazards associated with onsite disposal of low-level waste radioactive material, the NRC reevaluated the merits of the proposed rule. In the 7 years since this rulemaking was originally proposed, there have been a number of approvals granted by Agreement States for onsite disposal of low-level waste material under the equivalent of 10 CFR 20.2002 (successor to 20.302). The NRC staff is not aware of any problems with the Agreement States' approvals of any onsite burials of low-level waste material.

Based on the comments received, the relatively low hazards associated with onsite disposal of this type of radioactive material, and current experience with disposals, the NRC has reevaluated the issues and concluded that it is not necessary to reassert its regulatory jurisdiction over onsite disposal at reactor sites in the Agreement States.

Therefore, the proposed rule is not required and is being withdrawn. Withdrawal of the proposed rule does not affect the current NRC jurisdiction over disposal of special nuclear material by reactor or fuel cycle licensees. With the withdrawal of the proposed rule, the Agreement States will maintain jurisdiction over the disposal of low-level radioactive waste on nuclear reactor sites.

Dated at Rockville, Maryland, this _____ day of _____, 1996.

For the Nuclear Regulatory Commission.

_____
John C. Hoyle,
Secretary of the Commission.

CONGRESSIONAL LETERS

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Dan Schaefer, Chairman
Subcommittee on Energy and Power
Committee on Commerce
United States House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

In the near future, the U. S. Nuclear Regulatory Commission (NRC) intends to publish in the Federal Register the enclosed notification of withdrawal of the proposed amendment to the Commission's rules in 10 CFR Part 150 that was published in the Federal Register on August 22, 1988 (53 FRN 31880). The proposed changes would have reasserted NRC authority over disposal of low-level radioactive waste at nuclear reactor and fuel facility sites, and disallowed continuance of the practice of Agreement States authorizing such disposal. In consideration of public comments received, and the safety of this practice over the past 7 years since the proposed rule was published, the NRC no longer believes that this rule change is needed.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Representative Frank Pallone

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

The Honorable Lauch Faircloth, Chairman
Subcommittee on Clean Air, Wetlands, Private
Property and Nuclear Safety
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In the near future, the U. S. Nuclear Regulatory Commission (NRC) intends to publish in the Federal Register the enclosed notification of withdrawal of the proposed amendment to the Commission's rules in 10 CFR Part 150 that was published in the Federal Register on August 22, 1988 (53 FRN 31880). The proposed changes would have reasserted NRC authority over the disposal of low-level radioactive waste at nuclear reactor and fuel facility sites, and disallowed continuance of the practice of Agreement States authorizing such disposal. In consideration of public comments received, and the safety of this practice over the past 7 years since the proposed rule was published, the NRC no longer believes that this rule change is needed.

Sincerely,

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
Federal Register Notice

cc: Senator Bob Graham

PUBLIC ANNOUNCEMENT

NRC WITHDRAWS PROPOSED RULE ON AGENCY AUTHORITY
OVER LOW-LEVEL WASTE AT REACTOR SITES IN AGREEMENT STATES

The Nuclear Regulatory Commission has withdrawn a proposed rule that would have reasserted NRC's jurisdiction over low-level radioactive wastes generated and disposed of at reactor sites located in agreement states.

The agency is taking this action after analyzing public comments - most of which opposed the proposal - and after considering the relatively low hazards associated with on-site disposal of low-level radioactive waste. NRC and comparable state regulations already require that such on-site waste disposal be authorized on a case-by-case basis.

It was in 1988 that NRC proposed to reassert its authority over low-level waste generated and disposed of at reactor sites within agreement state borders. The proposed rule also would have clarified the jurisdiction over the disposal of non-critical waste quantities of special nuclear material at fuel cycle facilities. (Agreement states, which now number 29, are so named because they have agreements with NRC to regulate the uses of radioactive byproduct and source materials, including low-level radioactive wastes. Special nuclear material includes plutonium and certain types of uranium which, by law, are federally regulated and will remain under NRC jurisdiction).

Earlier, NRC believed the reassertion of its authority was necessary for NRC to retain control over the decommission process. The NRC staff reconsidered the proposed action after reviewing the public comments and the

relatively low hazards associated with onsite disposal of this type of radioactive material, and current experience.