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March 16, 1987

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Dec. 21, 1986
51 FR 47327
(8)

Samuel J. Chilk, Secretary
United States Nuclear Regulatory
Commission
Washington, D.C. 20555

Re: Notice of Proposed Agreement With Illinois,
52 Fed. Reg. 2309 (January 21, 1987)

Dear Mr. Chilk:

As a result of the partial grant of a recent FOIA request, US Ecology, Inc. has recently obtained a copy of a memorandum dated October 3, 1986 from R. John Starmer, Section Leader of the Low-Level Waste and Uranium Recovery Projects Branch, to John Hickey, Section Leader of the Materials Licensing Branch. A copy of the memorandum is attached. The analysis by Mr. Starmer presents further evidence why the Commission should not execute the proposed Agreement with the State of Illinois pursuant to Section 274 as to the Sheffield disposal site until the pending NRC enforcement proceeding has been completed.

In his memorandum, Mr. Starmer sets out a number of serious deficiencies in the Illinois application as regards its low-level waste program. Although Mr. Starmer says that the program would be compatible with the NRC program for management of low-level waste, his specific observations make it clear that the State's program, in its present form, is not compatible with NRC standards, especially as to possible regulation of Sheffield.

First, Mr. Starmer notes that it is unclear how Illinois will develop and regulate a low-level waste disposal site, in particular, whether the Illinois Department of Nuclear Safety will "undertake all three roles of developer, landlord, and regulator, and how . . . separation between these roles [will] be instituted."

As we pointed out in our principal comments submitted February 20, 1987, the NRC should not permit the State to be the arbiter of its own rights as site owner. In our view, it is inconceivable that any State program could be deemed

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"compatible" with NRC programmatic and licensing standards unless there are institutional safeguards in place to separate the function of the State as the developer and owner of disposal sites and its role as regulator, particularly in an enforcement or other adjudicatory proceeding.

Mr. Starmer's memorandum now confirms what US Ecology has been alleging as regards Sheffield, namely, that no clear separation in these roles presently exists within the Illinois Department of Nuclear Safety and, therefore, that there is no guarantee that US Ecology will be afforded due process of law by an unbiased tribunal which has not already prejudged the issues now pending before the Atomic Safety and Licensing Appeal Board.1/

Second, Mr. Starmer specifically notes that, as to Sheffield, the State application "lacks detail on closure and post-closure activities," including the lack of any information on "the time table for state takeover, what group will have responsibilities during what time period, specific activities that can be expected, or plans for the legal proceedings in the Thirteenth Judicial Circuit of Bureau County, Illinois."

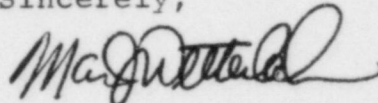
What Mr. Starmer has described as missing from the proposed Agreement are the very matters at issue before the Appeal Board. It would be unthinkable to transfer the case to Illinois in the circumstances of its complete failure to address those matters in its proposal. To do so would subject US Ecology to an essentially open-ended process of litigation in a total vacuum of applicable regulatory standards. It must be underscored, as Mr. Starmer points out, that no time frame whatsoever exists under the State program for completing post-operational activities which the State would no doubt require US Ecology to fulfill. In that context, it is also worth reiterating that, before the Licensing Board, the State took the position that US Ecology was obligated to remain on the site for the balance of the 99-year lease.

1/ To supplement our earlier statements, the Commission is advised that on this date, US Ecology has appealed the final decision of the Atomic Safety and Licensing Board on the legal issues, issued as a Memorandum and Order
(Footnote Continued)

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For these and the reasons previously stated in our initially submitted comments, as supplemented, the Commission should temporarily exclude Sheffield (or any category of matters which logically includes Sheffield, such as low-level waste disposal sites or enforcement cases) from the proposed Agreement with the State of Illinois.

Sincerely,



Mark J. Wetterhahn

MJW/RMR/ac

cc: Chairman Lando W. Zech, Jr.
Commissioner Thomas M. Roberts
Commissioner James K. Asselstine
Commissioner Frederick M. Bernthal
Commissioner Kenneth Carr
Jerry Scoville, President
US Ecology, Inc.

(Footnote Continued)

(February 20, 1987) and a subsequent, clarifying Memorandum and Order (March 10, 1987).



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

OCT 03 1986

MEMORANDUM FOR: John Hickey, Section Leader
Materials Licensing Branch
Division of Fuel Cycle and Material Safety, NMSS

FROM: R. John Starmer, Section Leader
Low-Level Waste and Uranium
Recovery Projects Branch
Division of Waste Management, NMSS

SUBJECT: REVIEW OF WASTE MANAGEMENT SECTIONS OF THE APPLICATION FOR
AGREEMENT STATE STATUS BY THE STATE OF ILLINOIS

Per your request to John Starmer (dated 09/11/86), the Low-Level Waste Section staff has reviewed the sections of the Illinois draft Application for Agreement State Status (dated 09/08/86) which relate to low-level waste (LLW) management. As part of the review, staff also reviewed drafts of Volume, II Statutes, and Volume III, Regulations.

Overall, as in our 08/21/85 review of an earlier draft, we find the proposed Illinois program to be compatible with the NRC program for management of low-level waste and could find nothing in the application that would preclude the granting of agreement state status based on inadequacies in the low-level waste management program.

We offer the following observations for your consideration in your response to the Office of State Programs.

- 1) The application is unclear as to Illinois' internal mechanism for developing and regulating a low-level waste site. For instance, will the process be similar to that of Texas or California or will some other process be used? Will the Illinois Department of Nuclear Safety (IDNS) undertake all three roles of developer, landlord, and regulator, and how will separation between these roles be instituted?
- 2) The section on the Sheffield Low-Level Waste Disposal Facility lacks detail on closure and post-closure activities. For instance, no information is given on: the time table for state takeover, what group will have which responsibilities during what time period, specific activities that can be expected, or plans for the legal proceedings in the Thirteenth Judicial Circuit of Bureau County, Illinois.
- 3) Nowhere in the applicable Illinois statutes, or in supporting regulations, is there a specific requirement for an Environmental Report or

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Environmental Impact Statement in support of activities related to low-level waste disposal. Illinois Revised Statute 1985, Supp. ch. 111 $\frac{1}{2}$, p. 241-10d does require an Environmental Impact Study of proposed LLW sites.

- 4) Illinois enabling legislation (Illinois Rev. Statute 1985, ch. 127, p. 63b17) appears to give IDNS adequate authority to carry out its low-level waste management responsibilities. The legislation gives IDNS the prime responsibility for state waste management activities, some of which will be carried out "in cooperation with" (Ill. Rev. Stat. 1985 ch. 111 $\frac{1}{2}$, par. 241-10) other state agencies such as the State Geologic and Water Resources Surveys. Some mechanism, such as memoranda of understanding, should be established between IDNS and the other agencies to outline the procedural steps for coordination of waste management activities.
- 5) It is unclear as to whether IDNS or IEPA or both would have authority over the disposal of mixed waste. The State Environment Protection Act (Illinois Rev. Statute 1983, par. 1004, 1025a-1025b, 1030-1045) seems to give IEPA authority over LLW sites with mixed waste. However, the enabling legislation (Illinois Rev. Statute 1985, ch. 127, par. 63b17) transfers some of IEPA's powers to IDNS, particularly relating to power plants and reprocessing plants. OELD should ascertain whether or not this transfer of powers also applies to LLW sites.
- 6) The staffing list (p. 27) is unclear as to how many full time positions versus part time positions are slated for each discipline.
- 7) OELD should ascertain if the application should provide for revision of state regulations as necessary should NRC change its regulations.
- 8) Illinois regulations for land disposal of low-level radioactive waste (32 Illinois Adm. Code 601) and portions of the Standards for Protection Against Radiation (32 Illinois Adm. Code 340) are generally compatible with the intent of 10 CFR 61 and 10 CFR 20. In reviewing the Illinois regulations the following discrepancies with NRC regulations were noted.

Part 601

In section 601.20, definitions of "license," "near surface disposal facility," "Department," and "person" were not provided. The definition of "land disposal facility" is different from the definition in 10 CFR 61.2.

Section 601.50 does not require that an Environmental Report accompany the license application.

In section 601.110 (c & d), the phrase, "...including equipment, facilities and procedures..." should be in parentheses to avoid ambiguity. Further, 601.110(c) should not tie releases to public water supply to 601.190. Standards for water supply are set by EPA and are more restrictive than requirements in 601.190.

Section 601.120 is significantly different than its 10 CFR 61.24 equivalent. Also, Illinois proposes no equivalent to 10 CFR 61.25 or 61.26.

Section 601.150 does not specify the beginning of the post closure period.

Section 601.230 lists two siting criteria (l and m) required by state law in addition to those listed in 10 CFR 61.50.

Section 601.250(1) seems to imply a willingness to dispose of greater than Class C waste.

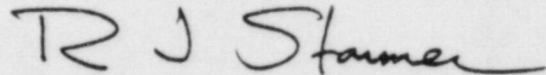
Part 340

Part 340 contains requirements for waste classification and waste form which are consistent with requirements in 10 CFR 61.55 and 61.56. It also contains manifest reporting requirements similar to those in 10 CFR 20.311.

Section 340.3070 is silent on greater than Class C waste.

Either definitions for terms such as "stability" and "chelating agent" should be provided in Section 340, or reference should be made to Section 601 and definitions included there.

If you have any questions about the above comments, please call Maxine Dunkelman, Project Manager on extension x74032.

A handwritten signature in black ink, appearing to read "R J Starmer". The signature is fluid and cursive, with the first letters of each name being capitalized and prominent.

R. John Starmer, Section Leader
Low-Level Waste and Uranium
Recovery Projects Branch
Division of Waste Management

cc: D. Nussbaumer, SP