

September 5, 2002

MEMORANDUM TO: William D. Travers  
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-02-0127 - PROPOSED  
RESPONSE TO STATE OF OHIO ON ITS ASSURED ISOLATION  
STORAGE FACILITY DRAFT RULES

The Commission has approved the staff's proposed response to the State of Ohio, subject to the changes noted in the attachment.

The staff should not initiate a rulemaking for an assured isolation facility (AIF) without direction from the Commission. However, the staff should proceed with a rulemaking plan that would explore the interest in the assured isolation concept and that would provide a foundation for a Commission decision on whether to develop a rule. The rulemaking plan should include Agreement State interaction and participation.

(EDO)

(SECY Suspense:

10/17/03)

If there is a rulemaking for an AIF, the rulemaking would be an excellent subject for NRC and the Agreement States to use to develop a pilot program under the Alliance option of the National Material Program.

Attachment: Revised letter to the State of Ohio

cc: Chairman Meserve  
Commissioner Dicus  
Commissioner Diaz  
Commissioner McGaffigan  
Commissioner Merrifield  
OGC  
CFO  
OCA  
OIG  
OPA  
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)

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SECY NOTE: THIS SRM AND SECY PAPER WILL BE MADE PUBLICLY AVAILABLE 5  
DAYS AFTER THE LETTER IS SENT TO THE STATE OF OHIO.

PDR

## Revised letter to the State of Ohio

Mr. Robert E. Owen  
Manager of Technical Services  
Bureau of Radiation Protection  
Ohio Department of Health  
246 North High Street  
P. O. Box 118  
Columbus, OH 43216-0118

Dear Mr. Owen:

I am responding to your letter of February 20, 2002, in which you requested our views on the proposed Ohio regulations for licensing of an assured isolation facility.<sup>1</sup> I want to stress that the Commission's policy has been, and continues to be, that **low-level radioactive waste (LLW)** should be disposed of safely in a permanent disposal facility as soon as possible after it is generated. Thus, the Commission strongly supports State and Compact efforts to develop new LLW disposal capacity in accordance with the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA). The Commission is also aware, **however**, that there are a variety of complex waste disposal issues, many of which are within the purview of the Atomic Energy Act, that continue to face the States and the Nation.

~~In particular, There are many challenges, in the area of site decommissioning, that depend, for their safe resolution, on the availability of safe and economic means for of managing LLW. The Commission is open to serious consideration of feasible and safe management proposals and recognizes the need to assist the States in efforts that could include assured isolation facilities. ; which will help manage LLW. These facilities would permit relatively short-lived radioactive wastes to decay during isolation and then be recycled or disposed of at a future date, not to exceed a specified period of time. Although assured isolation is a LLW management tool, In this connection, concerns about ultimate disposal must be reviewed, since because storage for a period of 100 years raises additional complex issues, such as financial assurance during the storage period and at ultimate disposal, identification of responsible parties and/or their successors, waste stability, and the LLRWPA requirement to establish additional permanent disposal capacity for LLW. In addition, consideration must be given as to how current State and U.S. Nuclear Regulatory Commission (NRC) regulatory limits on the possession of special nuclear material apply to an assured isolation facility.~~

~~In the past, several States expressed interest in the assured isolation concept. The questions that will need to be considered include, in part, a common definition for assured isolation, and what financial assurance mechanisms would be required during the storage period and for ultimate~~

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<sup>1</sup>Assured isolation is a low-level radioactive waste (LLW) management concept, and the associated facility is not permanent nor near-surface disposal, as defined in 10 CFR Part 61.

disposal. As a separate matter, other issues need to be considered, such as how current State and U.S. Nuclear Regulatory Commission (NRC) regulatory limits on the possession of special nuclear material apply to an assured isolation facility, or how other program elements under review and development, such as stewardship and financial assurance, impact the final outcome of a proposed regulation for assured isolation. We had anticipated a need for rulemaking on assured isolation as an interim measure to manage LLW, until permanent disposal facilities are developed. We currently anticipate initiation of this effort in the fiscal year 2004-2005 time frame. We also recognize that the Commission, in the past, noted it would provide assistance to a State or other organization that developed requirements for an assured isolation facility.

In the next decade, adequate permanent LLW disposal capacity may not be available, and this would not be in the best interest of the public. Therefore, it is timely to consider your proposal, as it could be a helpful foundation which other Agreement States could use in their development of similar operable regulations rules. We thus, are providing the enclosed general comments as a technical consultation to you for your consideration. These comments are Although not all-encompassing, these comments and are being provided for your assistance ; should you continue to develop regulations separately for the assured isolation concept. Please note that should if the NRC should proceed at a later date to develop assured isolation regulations facility rules, with extensive public and stakeholder involvement, that might require and pending NRC compatibility requirements, Ohio may be required to amend its regulations rule, to be compatible with NRC, depending on the compatibility category.

We would be pleased to discuss these issues and comments. Please contact me or Dr. Stephen Salomon of my staff at 301-415-3340.

Sincerely,

Paul H. Lohaus, Director  
Office of State and Tribal Programs

Enclosure:  
As stated