

UNITED STATES OF AMERICA NUCLEAR REGULATORY COMMISSION

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TITLE TRANSFER OF LOW-LEVEL WASTE

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

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BRIEFING ON ISSUES RAISED BY THE
PROVISION REQUIRING TITLE TRANSFER
OF LOW-LEVEL WASTE

- - - -

PUBLIC MEETING

Nuclear Regulatory Commission
One White Flint North
Rockville, Maryland

Monday, October 29, 1990

The Commission met in open session,
pursuant to notice, at 10:00 a.m., Kenneth M. Carr,
Chairman, presiding.

COMMISSIONERS PRESENT:

KENNETH M. CARR, Chairman of the Commission
KENNETH C. ROGERS, Commissioner
JAMES R. CURTISS, Commissioner
FORREST J. REMICK, Commissioner

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STAFF SEATED AT THE COMMISSION TABLE:

SAMUEL J. CHILK, Secretary

WILLIAM C. PARLER, General Counsel

JAMES TAYLOR, Executive Director for Operations

ROBERT BERNERO, Director of Operations, NMSS

RICHARD BANGART, Director, Division of LLW Management
and Decomm., NMSS

JOHN HICKEY, Chief, Operations Branch, NMSS

KATHLEEN SCHNEIDER, Health Physicist, GPA

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P-R-O-C-E-E-D-I-N-G-S

10:03 a.m.

CHAIRMAN CARR: Good morning, ladies and gentlemen.

This morning the staff will brief the Commission in issues associated with the title transfer provisions of the Low-Level Radioactive Waste Policy Act. This Act provides a series of milestones, incentives and penalties to ensure that states make timely progress in developing new disposal facilities for low-level radioactive waste. The title transfer provisions of 1993 and 1996 are key to successful implementation of the national policy established in the Act.

We look forward to hearing from staff on their recommendations to fulfill the Commission's health and safety responsibilities in conjunction with the title transfer provisions.

Copies of the staff's briefing slides are available at the entrance to the room. I also would like to welcome any state representatives that may be observing this morning's meeting.

Do any of my fellow Commissioners have any opening comments?

If not, Mr. Taylor, please proceed.

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1 MR. TAYLOR: Good morning. With me at the
2 table, starting at my far left, John Hickey and Bob
3 Bernero from NMSS. To my right, Dick Bangart and to
4 his immediate right Kathleen Schneider from the Office
5 of State Programs.

6 This briefing does cover a number of
7 important policy considerations in this area for which
8 we had a specific recommendation in the paper provided
9 to the Commission. I'll ask the formal briefing to
10 begin with Dick Bangart.

11 MR. BANGART: Thank you, Jim.

12 (Slide) I'd like to begin with the second
13 slide, please, in your package. This slide does
14 contain, in summary form, a brief outline of the
15 presentation this morning. The main focus of the
16 presentation, however, will be on the last three
17 bullets. Those bullets identify the specific items
18 that were requested by the Commission in their staff
19 requirements memorandum.

20 Additionally, I'll be folding into the
21 presentation this morning a description of recent
22 events that have been taken by the three currently
23 sited states to address an apparent lack of meaningful
24 progress by states or compacts in development of new
25 disposal capacities. I'll also be identifying some

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1 other actions that states and compacts have taken to
2 demonstrate that there is progress taking place.

3 (Slide) Let's move to slide 3 now,
4 please.

5 The staff requirements memorandum, dated
6 February 14th, 1990, did request three actions on the
7 part of the staff. The first of those requests was to
8 evaluate the issues that are raised by the title
9 transfer and possession provisions of the Amendments
10 Act. The second request was to identify and evaluate
11 the advantages and disadvantages of conceptual
12 approaches that we might take to fulfill our
13 responsibilities that result from or are attended to
14 implementation of the milestone beginning in January
15 1993. The third request was for us to develop a
16 specific schedule for implementing any regulations or
17 regulatory guidance that might be necessary to ensure
18 that we have a complete and stable regulatory
19 framework in place at the time that the milestone goes
20 into effect.

21 Before we get into a discussion of the
22 specific requests, I'd like to go over some background
23 material that we used in carrying out those actions
24 that were requested. As you are aware, generators in
25 non-sited states, non-sited compacts may be denied

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1 access to existing facilities beginning in January of
2 1993. The Amendments Act also identifies both January
3 1993 and January 1996 as milestones or deadlines for
4 the operation of a new disposal facility. If no
5 disposal capacity exists at either of those dates, a
6 generator in a state may request state authorities to
7 take title to and possession low-level radioactive
8 waste and if the state fails to do so, assume
9 liability for that failure to do so.

10 The January 1993 deadline, as opposed to
11 the 1996 deadline, however, does allow a state to
12 elect not to take legal responsibility for such
13 material. In 1996, the state has no option but to
14 take legal responsibility.

15 You may recall from the January briefing
16 of this year where we addressed the January 1990
17 milestone in the Act, that in responding to that
18 milestone nearly all states provided a governor's
19 certification stating that they would safely manage or
20 dispose of waste after January 1993, and in doing so
21 they indicated that they would rely on storage in some
22 form. The alternative storage forms that they
23 proposed were to either rely on storage at individual
24 generators or to rely on storage at centralized
25 facilities within their states or to rely on a

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1 combination of those forms of storage.

2 It's appropriate at this point to identify
3 some actions that have been taken by the states that
4 relate to compliance with the Amendments Act. We've
5 recently received a letter from Vermont indicating
6 that they have established a low-level waste authority
7 within that state. They are initiating actions to
8 develop a new disposal facility. They believe as a
9 result of legislation that's recently been passed that
10 they are in compliance with the January 1990 milestone
11 of the Act.

12 Massachusetts has recently submitted a
13 letter describing the current status of their
14 activities to assure that they will be capable of
15 safely managing of wastes in January of 1993. I think
16 we're aware also that the three sited states have sent
17 letters to Michigan, New York, Massachusetts, Maine,
18 Connecticut and New Jersey expressing concern about
19 the lack of progress on the development towards new
20 disposal facilities and that they have threatened
21 denial of access to those states in the near-term.

22 So, the picture that's developing we
23 believe is clear. Not all states will have new
24 disposal capacity on-line by either 1993 or 1996. The
25 states plan to rely on storage both after 1993 and

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1 1996 and to a major degree the states appear to be
2 relying on storage at individual generator's
3 facilities.

4 (Slide) Let's move now to slide 5,
5 please.

6 COMMISSIONER CURTISS: Let me clarify
7 something before you go on there. On the question of
8 reliance on storage past 1996, what you've seen in the
9 certifications that were submitted prior to January
10 1st of '90, together with the recent ones that you
11 alluded to from Vermont and Massachusetts, would it be
12 fair to say that in all cases where those states or
13 compacts are relying on storage past January 1st of
14 '96, that they are doing so in conjunction with a
15 well-defined disposal program that would eventually
16 lead to a site either by '96 or shortly thereafter?

17 MR. BANGART: I've got some information
18 that will be incorporated in one of the later slides
19 that speaks to the status of states' and compacts'
20 activities toward development of new facilities.

21 COMMISSIONER CURTISS: Okay.

22 MR. BANGART: Generally, the answer to
23 that question is yes.

24 COMMISSIONER REMICK: Could I ask a
25 question also for clarification? Is it possible for

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1 one entity to accept title to the material and another
2 to have license to store/possess or must they go
3 together?

4 MR. BANGART: I believe the answer to that
5 question is yes also.

6 MR. PARLER: I would agree with that from
7 the legal standpoint, to have one person look at the
8 title of the ownership under, say, general license
9 approach and somebody else that would be satisfactory
10 to the regulatory agency to have a licensee to
11 possess.

12 COMMISSIONER REMICK: Thank you.

13 MR. BANGART: Let's move on to slide 5
14 then, please.

15 So, with that background information, the
16 staff did set about the task of identifying issues
17 raised by the title transfer and possession provisions
18 in the Act. Now, in setting about this task, we
19 established a fundamental premise that we adhere to
20 throughout the process and continue to adhere to
21 today. That's that the objectives and intent of the
22 Amendments Act will indeed be achieved. That is, that
23 states will be responsible for safely managing or
24 disposing of low-level waste and indeed that new
25 facilities will be established, albeit on a slightly

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1 different time scale than that spelled out in the
2 Amendments Act.

3 We identified three issues for evaluation.
4 The first is whether the existing regulatory framework
5 is adequate to enable states to take title and
6 possession and store waste. The second is whether NRC
7 should approve of storage beyond 1996 and if we were
8 to do so, will such approval removal incentive on the
9 parts of states and compacts to develop new
10 facilities. The third issue that we identified is
11 whether the Agency should limit the time period for
12 such storage if indeed we implement such approvals in
13 any form.

14 (Slide) The first issue is identified on
15 slide 6. The Office of General Counsel did conduct
16 the review of the adequacy of the existing framework.
17 It was concluded that Parts 30, 40 and 70 do contain
18 general license provisions that authorize any person
19 to be an owner or to have title to radioactive
20 materials. So, any legal questions that would relate
21 to the title transfer provision in the Act would come
22 about as a result of requirements in state laws that
23 deal with the transfer of private property ownership.

24 COMMISSIONER CURTISS: Explain that point.
25 I noted that observation in both the OGC analysis and

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1 in the SECY paper, that this question would depend
2 upon what the state laws permit or provide. Does
3 that, in effect, mean that if, as you've indicated,
4 our current regulations in 30, 40 and 70 permit a
5 state to come in and apply for title transfer, that if
6 the state law prohibited the state from taking title,
7 that that would effectively moot the purpose of that
8 provision?

9 MR. PARLER: I think that's probably a
10 legal question that somebody from OGC should respond
11 to. My answer to the question that you posed is that
12 I would have difficulty if there were a state law
13 that, in effect, stood in the way or conflicted with
14 the objectives of this statute, at least as far as the
15 passage of title is concerned. On the other hand, as
16 far as the passage or the actual possession and the
17 terms and conditions under which the possession will
18 be taken, et cetera, that might be another question.
19 The details of this, perhaps Mr. Malsch could speak to
20 after he identifies himself.

21 MR. MALSCH: I'm Martin Malsch with OGC.

22 I agree with what was just said. The only
23 qualification that's conceivable to me is there could
24 be state recordation or procedural requirements which
25 you'd expect to be adhered to in any event with a

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1 transfer of title. But the federal law says the
2 states shall take title, which is obligatory. So, I
3 would say state laws which attempted to prevent that
4 from occurring would be in conflict with federal law
5 and of no effect.

6 MR. PARLER: Now, as far as the
7 traditional recordation laws for the passage of title,
8 I would not view those as necessarily -- at least on
9 their face, as in conflict. So, there has to be--
10 the essence of what I'm saying is that there has to be
11 an approach under which the state and local laws could
12 not nullify the objectives of this Low-Level Waste Act
13 Amendments of 1985.

14 COMMISSIONER CURTISS: Thanks, Bill.

15 MR. BANGART: Just for clarification as
16 well, the provisions in the regulations that address
17 general license are effective without a specific
18 application from an applicant of any sort.

19 It was also clear as a result of the
20 review that, I think as we all suspect, that before
21 possession could take place on the part of the state
22 that is licensed from the Nuclear Regulatory
23 Commission or an agreement state would be required in
24 that Parts 30, 40 and 70 do serve as an adequate basis
25 for licensing possession and storage by a state. That

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1 regulation framework is supported by guidance
2 documents that have been issued by the Agency over the
3 last several years. They're Generic Letters 81-38,
4 85-14, which were addressed to power reactors, and
5 Information Notices 89-13 and 90-09, which were
6 addressed to materials and fuel facility licensees.

7 All of these guidance documents express
8 the longstanding position of the Agency now, that we
9 do not view storage as a substitute for disposal.
10 These guidance documents go on to explain the
11 circumstances under which a specific license approval
12 from the NRC would be required. We also identified
13 those alternate circumstances where such specific
14 approval would not be required. I'd also point out
15 that in Generic Letter 81-38 and Information Notice
16 90-09, that there's very clear guidance and
17 recommendation in there that speaks to storage
18 limitation that limits storage for a period of five
19 years.

20 So, the NRC does have an adequate
21 regulatory framework in place for licensing title
22 transfer and interim storage at least for up to a
23 period of five years on the part of the states. We
24 also believe that agreement states have a similarly
25 adequate regulatory framework. They have regulations

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1 equivalent to Parts 30, 40 and 70. They have been
2 provided the guidance that I referenced and they have
3 been encouraged to adopt similar guidance within their
4 state program.

5 (Slide) The second and third issues are
6 shown on slide 7. They are related. The second
7 issue is the question of whether we should approve of
8 storage after 1996 and the third is whether we should
9 limit such period of storage.

10 In conducting this evaluation, we reviewed
11 the existing record of the Commission, of the Agency
12 on the matter of storage. We found that there is a
13 Commission position already that indicates that we
14 would not look favorably on long-term storage after
15 1996. We are not on record, however, identifying
16 anything in our regulatory framework that precludes
17 storage after 1996.

18 The record also goes on to state that
19 storage as a substitute for disposal would not be
20 consistent with the Amendments Act. We've also stated
21 that we recognize the necessity of interim storage on
22 new disposal capacities being developed. We've made
23 that latter statement without any reference to the
24 year 1996, for example.

25 So, with that existing record of the

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1 Agency in place, because of the fact that there's no
2 prohibition in law against storage beyond 1996,
3 importantly because there is a safety -- a regulatory
4 safety framework that we believe is in place and can
5 assure safety for a five year storage period, we are
6 prepared at this time to approve licensee storage
7 requests for a single five year period.

8 We've also looked at the status of
9 development activities on the part of states and
10 compacts. We believe importantly that a single five
11 year storage approval should be adequate in terms of
12 the amount of time that's necessary for the
13 establishment of new disposal facilities. The latest
14 scheduled projected date for operation of new disposal
15 facilities, with perhaps one exception, is the year
16 1997. The exception is New York. Their schedule is
17 currently under revision and that revised schedule is
18 expected to be finalized later this year.

19 Slide 8 addresses the second specific
20 request from the Commission in the staff requirements
21 memo. That was to examine the advantages and
22 disadvantages of conceptual approaches that the NRC
23 might take to fulfill our responsibilities. We
24 clearly see a responsibility to convey to the states
25 the regulatory framework as it relates to title

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1 transfer possession and possible storage. We
2 evaluated three options as well as the no action
3 alternative, the first of which would be to amend our
4 regulations to codify NRC's position on storage and
5 identify the requirements that we would apply in
6 licensing such storage. The second option would be to
7 issue letters to governors which would summarize the
8 NRC's position and provide a reference, applicable
9 guidance and regulations. The third approach that we
10 identified would be to issue a formal policy statement
11 which is a middle ground alternative to the first two.

12 (Slide) Slide 9 identifies the first
13 approach that we evaluated. I've already indicated
14 that we believe there is an adequate regulatory
15 framework in place for storage at least up to a period
16 of five years. So, we do not favor this particular
17 approach. We've further reviewed the guidance. Don't
18 believe that additional guidance is necessary at this
19 point. So, we have provided to no schedule for rule
20 or guidance promulgation as was requested by the staff
21 in the staff requirements memorandum.

22 (Slide) Move on to slide 10.

23 This is the approach of issuing letters to
24 the governors of respective states. This is the
25 approach that the staff favors. This letter would

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1 contain guidance addressing many of the issues that
2 we're discussing this morning and we have enclosed
3 with SECY-93-018 a proposed draft letter. We favor
4 this approach because, first of all, the regulatory
5 framework is adequate and importantly because we have
6 had success in using this approach in the recent past.

7 Prior to the January 1990 milestone to
8 provide a certification or a complete application, we
9 did provide two such letters to governors of states in
10 response to the requirements in the Act as supported
11 by the guidance that we provided. Nearly all states
12 did provide the necessary information and provided
13 that information in a timely manner. With this
14 approach we would propose that the signature sign out
15 such letters. We believe your signature would
16 emphasize the importance of the storage issue as it
17 relates to the development of new disposal capacity
18 within the states and compacts.

19 Also favoring this approach is the fact
20 that a modest resource requirement would be placed on
21 the staff to implement it. In fact, we believe this
22 particular approach is optimal in that respect when
23 you balance the effectiveness of the approach against
24 the requirements or staff resources that would be
25 called for to implement it.

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1 (Slide) The third approach is shown on
2 slide 11. I think it's fair to say this would be our
3 second most favored approach. However, we did not
4 favor it because we do believe that the use of the
5 letters to governors will be sufficient to convey the
6 Agency's position. This would be a much more resource
7 intensive option and it could be a lengthy period of
8 time before a final Commission policy statement is
9 issued given the controversial aspects that are
10 associated with many elements of the nation's program
11 to develop new low-level waste disposal facility
12 capacity.

13 Importantly also, we believe that the
14 national program is just too fluid at this point in
15 time to justify the establishment of a formal
16 Commission policy statement. We're aware of the fact
17 that lawsuits have been filed by New York, Michigan
18 and a citizens group in Nevada challenging the
19 constitutionality of certain parts of the Act. I
20 mentioned the actions by the three currently sited
21 states to possibly deny access to Michigan, Maine,
22 Massachusetts, New York, Connecticut and New Jersey.
23 We're aware of the action that's been taken by Vermont
24 to bring themselves into compliance with the Act.
25 We've recently been contacted by the State of

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1 Connecticut where they've indicated they are
2 initiating an aggressive program to site a facility in
3 that state. In fact, we're meeting with the
4 representative from Connecticut on Thursday of this
5 week. California and Nebraska are reviewing specific
6 license applications. We're aware that during this
7 year that the Northwest compact and the Rocky Mountain
8 compact are working towards finalizing an agreement
9 under which states in -- or generators, I'm sorry, in
10 states in the Rocky Mountain compact would be able to
11 have access to the Hanford facility beginning in
12 January of 1993.

13 CHAIRMAN CARR: That citizens group that
14 joined the lawsuit was from Nebraska, wasn't it,
15 rather than Nevada?

16 MR. BANGART: I'm sorry. If I said
17 Nevada, that was an error. It's Nebraska.

18 The fourth alternative that we did
19 evaluate was no action at all on the part of the
20 Agency other than to continue to monitor progress.
21 Monitoring of progress or continued monitoring of
22 progress, of course, is really associated with all of
23 the approaches that we evaluated. We don't favor this
24 approach, however, because we think there is a clear
25 need to send an unequivocal message to states as to

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1 the Agency's position on these matters.

2 (Slide) We'll conclude with slide 13.

3 With the information that we've presented
4 this morning serving as the rationale, we are
5 requesting your approval to issue letters to governors
6 and to continue to use existing guidance to review
7 storage requests from applicants or licensees and to
8 limit such storage to a period of five years. We
9 obviously are also continuing to recommend that we
10 monitor state and compact progress in developing new
11 disposal facilities. There are a number of
12 communication pathways that we use to obtain
13 information about progress. These include regular
14 interface with organizations or people like the Low-
15 Level Radioactive Waste Forum, the Host State
16 Technical Coordinating Committee, the Department of
17 Energy, the Environmental Protection Agency on mixed
18 waste matters, the Agreement State authorities and our
19 Agreement State officers in the regions, and our
20 regional state liaison officers as well.

21 With that, the formal presentation is
22 concluded and I'd be happy to respond to questions or
23 comments.

24 CHAIRMAN CARR: Commissioner Remick?

25 COMMISSIONER REMICK: Going back to my

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1 earlier question where a state might have title and
2 some other entity have the license to possess or
3 store, I assume this would not give us any problem on
4 inspection, but does it give us any unique problems
5 from the standpoint of enforcement?

6 MR. BANGART: I believe the licensee is
7 the entity that we look to in enforcement matters as
8 well.

9 COMMISSIONER REMICK: So the licensee
10 would be responsible from an enforcement standpoint
11 even though the title was with the state?

12 MR. BANGART: I believe --

13 MR. PARLER: That would be my -- we have
14 had situations that raise that sort of issue in the
15 past, I've been told, such as for the financing of the
16 fuel for a nuclear power plant. The title might be in
17 one entity and the licensee that is authorized to own,
18 possess and use is in another entity and it's the
19 latter entity that we look to to carry out our
20 requirements to assure that the public health and
21 safety and the common defense and security are
22 protected.

23 COMMISSIONER REMICK: Okay. Well, a
24 follow-on question then. Can the staff conceive of
25 any condition where a generator, waste generator would

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1 not request the state to take title and possession
2 after 1996? Is there any conceivable situation, I
3 can't think of one, in which a generator would not
4 want to ask the state then to assume responsibility?

5 MR. BANGART: I think there are some
6 scenarios where that may actually indeed be the case.
7 If a state is making progress, significant progress
8 toward the development of a new facility, but it's not
9 on-line as of January 1996 but is scheduled to be on-
10 line in late 1996 or early 1997, for example, then
11 there may be motivation for a generator because of
12 that knowledge to go ahead and to continue to store
13 waste at his facility. It's also conceivable that
14 depending on the costs associated with storage at a
15 centralized facility, for example, a state may decide
16 that for the short-term or interim term it's to his
17 economic advantage to continue to store at his own
18 facility.

19 Another scenario would be that --

20 COMMISSIONER REMICK: I'm sorry, I didn't
21 understand. What would be the economic advantage
22 after '96?

23 MR. BANGART: Costs. There likely would
24 be costs and some states have gone on the record
25 saying those costs would be significant if they were

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1 to accept waste for storage at a centralized facility.
2 Those costs may be such that it would cause the
3 licensee to consider whether or not he wanted to
4 actually transfer waste to a state or not or continue
5 to store on-site at his facility.

6 COMMISSIONER REMICK: So, if the generator
7 was prepared to ship after 1996 and requested the
8 state to do it, the costs for that would be passed
9 onto the generator?

10 MR. BANGART: States have indicated that
11 there would be costs associated with storage, just as
12 there would be costs associated with ultimate
13 disposal.

14 COMMISSIONER REMICK: I see.

15 MR. BANGART: Okay?

16 COMMISSIONER REMICK: All right. So,
17 there are possible reasons why they plan --

18 MR. BERNERO: If I could add, the basic
19 situation here, we don't have any state or entity in a
20 position where we would say they clearly don't have a
21 program. They're not going to get there from here.
22 There are programs that are in better shape than other
23 programs and they are not necessarily on the time
24 table of the Act. As a result, generators in the
25 various states or entities are going to collaborate

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1 with those programs to some reasonable degree and not
2 necessarily precipitate an action that would put the
3 state in a very difficult position and the state
4 ultimately, even exercising its responsibility, is
5 going to pass through costs. It's a very powerful
6 lever. In any of the dialogue that's going on, the
7 states that are developing low-level facilities,
8 disposal facilities, very, very high costs.

9 COMMISSIONER REMICK: Yes.

10 MR. BERNERO: So, the generators have an
11 incentive to collaborate and get there from here with
12 their states or groups of states.

13 COMMISSIONER REMICK: Well, the thing that
14 wasn't clear to me, if they have to accept title and
15 possession, if they're requested after 1996, who's
16 then responsible for the cost? This was not clear to
17 me that that could be passed through to the generator.
18 I assumed if you are forced to accept title and
19 possession that you have the responsibility.

20 MR. BERNERO: Yes. This is the unique
21 difference in the past when banks have owned reactor
22 cores. There's never been a question that someone
23 would turn around and say, "Bank, here's the core. I
24 don't want it anymore," as a means of waste disposal.
25 The unique thing here is that it ultimately will go to

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1 the possession of the state and title as well. It's
2 unique in that regard.

3 COMMISSIONER REMICK: I certainly lean
4 toward the staff's recommendations, but independently
5 we have received a request for staff input. I would
6 favor that and I understand the Chairman is going to
7 address that later.

8 But that's all I have, Mr. Chairman.

9 CHAIRMAN CARR: Well, you said that all
10 the states seem to have some program in progress which
11 kind of disagrees with the sited states in Michigan.

12 MR. BERNERO: At this stage, to judge at
13 this stage whether they're far enough along. The
14 sited states have great power and they're using it to
15 lever those states. It is working in some cases.

16 CHAIRMAN CARR: But you wouldn't say that
17 we as an NRC are happy with Michigan's program, would
18 you?

19 MR. BERNERO: No. Oh, no. I wasn't
20 intending to say that.

21 CHAIRMAN CARR: Maybe I'm missing
22 something.

23 MR. BERNERO: But it would -- what I was
24 intending to say at this stage, recognizing that it's
25 late 1990, for us to say that there isn't a state that

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1 can remotely even approach 1996 as a conclusion, and
2 as Dick said, right now you lay out the state
3 schedules, what they've said in the compliance,
4 they're not quite on the mark, but they've got
5 something. They've got something proposed. It's
6 flawed, it's something that leads the sited states to
7 take the actions they're taking. That's part of the
8 process, just as these monetary penalties are part of
9 the process.

10 CHAIRMAN CARR: Commissioner Rogers?

11 COMMISSIONER ROGERS: Where do you see
12 Texas and California coming in? What time frame do
13 you think that those sites might be --

14 MR. BANGART: Texas is now in court over
15 the siting of their particular facility. I believe
16 they're projecting now as long as a two year series of
17 court battles. I believe they're projected
18 operational date is now 1995 or thereabouts.

19 COMMISSIONER ROGERS: That would be--
20 they would meet the '96 date then?

21 MR. BERNERO: Oh, yes. I think probably
22 Texas and California, which are not without
23 difficulty, as you know, the recent comments on the
24 California action, I think they can meet 1996. They
25 are among the better programs. They started early.

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1 The northwestern states are in the far -- by far the
2 best condition because they already have a site. But
3 some of the other states, it's pretty tough to say
4 now, but they really have to stretch to do something
5 by 1996.

6 COMMISSIONER ROGERS: I guess I
7 misunderstood. I thought you said no state would meet
8 the '96 date

9 MR. BERNERO: Oh, no, no. Oh, no, I think
10 some will meet it.

11 MR. BANGART: California is still
12 projecting 1991.

13 COMMISSIONER ROGERS: The five year
14 storage authorization period, is there any technical
15 basis for that five years or is that just a nice round
16 number?

17 MR. BANGART: It was developed in response
18 to events that were occurring in the early '80s. It
19 was first addressed to storage at power reactors and
20 it was developed from a safety standpoint primarily
21 with the policy implications also being factored into
22 it. But with the existing guidance that was given to
23 the power reactor, it was felt to be sufficient for a
24 period like five years. There's nothing magic. It's
25 not unsafe at five years and one day. But a time

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1 frame on that order is what was intended.

2 MR. BERNERO: If I could add, we have had
3 a longstanding practice in material licensing of using
4 a five year period in a reevaluation and, if
5 appropriate, a renewal. We're consist with that.

6 COMMISSIONER ROGERS: But it's not really
7 based on a technical --

8 MR. BERNERO: No, no, no.

9 COMMISSIONER ROGERS: Okay.

10 MR. BERNERO: In fact, as is the practice,
11 material possession is typically a high surveillance
12 practice and with appropriate conditions has been and
13 can be renewed again and again.

14 COMMISSIONER ROGERS: Okay. That's fine.

15 CHAIRMAN CARR: Commissioner Curtiss?

16 COMMISSIONER CURTISS: Well, I have a
17 number of questions. Let me see if I can put a
18 sharper point on some of the policy questions because
19 I understand what the staff is proposing. For the
20 first time here, what you're proposing is that we, as
21 an Agency, authorize or encourage or allow the
22 generators of waste to store that waste for an
23 additional period of two years past 1996 which is the
24 deadline in the statute for disposal capacity. There
25 are a number of questions I want to get at in terms of

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1 what the rationale for that is.

2 Let me -- if I understand the schedules
3 here, and I'm looking at --

4 CHAIRMAN CARR: But that wouldn't be
5 blanket, would it? That's just if requested.

6 COMMISSIONER CURTISS: That's right.
7 That's right.

8 CHAIRMAN CARR: Yes.

9 COMMISSIONER CURTISS: Without the blanket
10 approval, I guess, of a disposal facility in the state
11 and given what the staff has said on transfer of
12 possession, that that would be very difficult to do,
13 the states would end up, I think -- it would lead to a
14 de facto policy that the generators in the states
15 would store for an additional two year period of time.

16 In looking at the latest schedules here,
17 and I'm looking at the August '90 schedules of the
18 forum, it looks to me like we've got four states or
19 compacts that won't make the January 1st, '96
20 deadline. You've got the Pennsylvania site, the
21 Appalachian compact. You've got Michigan, you have
22 Maine and you may have New York, depending on what
23 they tell you in their updated schedule. Everybody
24 else, according to this schedule, looks like they'll
25 meet the January 1st, 1996 deadline for having a

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1 disposal facility in operation.

2 Now, question. Two of those states,
3 Michigan and New York, have mounted aggressive
4 challenges of the constitutionality of the statute and
5 have taken actions that may suggest that this delay
6 may extend for those two states much longer than
7 January 1st of '86 or January 1st of 1998. Maine may
8 be a separate situation since they're talking about
9 on-site storage and disposal. That leads you with the
10 Appalachian -- the Pennsylvania compact site.

11 I guess I'm not persuaded yet why it is
12 that we need to authorize storage beyond January 1st
13 of '96. In particular, if that leads to the result
14 that the whole program, including the ones that are
15 currently scheduled to meet the 1/1/96 deadline, shift
16 two years and it now becomes 1/1/98, 18 years instead
17 of 16 after the states first sought this
18 responsibility. Can you assuage my concern here that
19 1/1/98 now is a date that makes sense in terms of
20 authorizing -- I guess the rationale is five years
21 from 1993, which is when they're supposed to have
22 their sites in operation. Five plus '93 is '98.
23 What's the thinking that's gone into that?

24 MR. BANGART: I can spell out some
25 factors. As we've discussed, clearly there is no

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1 health and safety tie to 1996. So, that was an
2 important factor in the staff's thinking. Also, as I
3 think you're likely to be aware, for us to establish
4 such a position would likely to be controversial in
5 nature since there doesn't appear to be a strong tie
6 to health and safety. We're concerned that
7 establishing such a strong position would perhaps
8 divert resources in the states and have those
9 resources focused on that particular question of the
10 use of the 1996 deadline in that manner and would also
11 require resources on the part of our Agency to deal
12 with that controversial issue.

13 I might also go on to say that we have in
14 the guidance that we have promulgated, made it very
15 clear that when we do have an action to take in terms
16 of approving or disapproving of a storage request, the
17 information that the applicant should give to us
18 should contain a description of what the plans are for
19 ultimate disposal. If there is not a plan for
20 ultimate disposal, then the staff would have to
21 consider whether or not that storage could be licensed
22 under Parts 30, 40 or 70, or whether we would have to
23 consider such requests for storage as really disposal
24 and it may have to be licensed then under Part 61 as
25 something like an above-ground vault.

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1 So, I think we have some mechanisms in
2 place to be able to deal with a less than genuine
3 request for disposal, for example.

4 Bob, do you have anything else to add?

5 MR. BERNERO: No. The only thing I would
6 add a the concept that rarely comes out when you're
7 talking about this is if you refuse to license
8 storage, then you have to drop the other shoe and say,
9 "What is authorized," because the waste exists. One
10 would then have to take up the question of further
11 generation of waste or getting into the arguments that
12 go with emergency access authorization, which is
13 another thing. We have criteria for that under the
14 Act and we don't expect them to prevail in this kind
15 of a dialogue. That's a difficult thing.

16 COMMISSIONER CURTISS: Yes. You're
17 compounding my concern though. I guess the argument
18 that you're making will suggest that you can go beyond
19 '98, that you may not see progress made in '98, it
20 could be nearer 2000 or 2005. I understand the
21 argument here is that it's five years from 1993. But
22 frankly, I disagree with the conclusion that there
23 isn't any health and safety concern associated with
24 low-level waste disposal, particularly for the small
25 generators.

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1 But let me give you a good example. The
2 Nine Mile situation, where we had the AIT, points to a
3 very evident kind of problem that on-site storage of
4 low-level waste can lead to. I frankly am not
5 persuaded that it's preferable to allow a situation to
6 go much further than 1996, particular when, as I say,
7 two of the four states not evident at this point, that
8 we would expect progress by the year 1998, that there
9 would be a disposal site in operation for Michigan or
10 New York in 1998.

11 MR. BANGART: The recommendation in the
12 paper also has as an integral part of it that we would
13 continue to actively follow progress. Perhaps what I
14 left unsaid was that if events were to develop in this
15 country that we were to identify a clear need for
16 strong policy statement, development of amended
17 regulations or additional guidance, that we would be
18 able to anticipate that need and come forward to the
19 Commission with such recommendations at that point in
20 time.

21 So, we haven't foreclosed that or we
22 didn't attempt to foreclose that possibility in the
23 paper, but we think at this point in time that it's
24 not needed.

25 COMMISSIONER CURTISS: Yes. Well, I do

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1 think that you're heading in the right direction and
2 you recognized that in the paper and in your
3 presentation today that there is a sensitive balance
4 between authorizing storage for now an extended period
5 of time, 18 years for this program, under the proposal
6 to allow storage up until 1998 and --

7 CHAIRMAN CARR: I don't understand your 18
8 and 16 year stuff.

9 COMMISSIONER CURTISS: 1980 is when the
10 Act first passed. The states said they wanted the
11 compact authority.

12 CHAIRMAN CARR: But it's being legally
13 disposed of right now in the three sited states.

14 MR. BERNERO: Yes.

15 CHAIRMAN CARR: So, we're not really
16 talking about storing it for 18 years.

17 COMMISSIONER CURTISS: Right. It's not an
18 18 year storage period. My point here is that from
19 the time that we first set out on the program to
20 develop national compacts and to alleviate the three
21 sited states from the responsibility to dispose of the
22 material, the states that don't have or aren't a
23 member of the sited compacts now and in 1980 sought
24 the responsibility to develop these new sites up to
25 the current time, have 16 years and 18 under this new

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1 policy. I think we reach a point at some stage where
2 we have to say, "Isn't that sufficient time?"

3 It's sort of like the debate that we went
4 through on the budget just recently, where you extend
5 the deadline for making a decision a week or two weeks
6 and the work that's required to be done fills the
7 available time that's available to carry out that --

8 CHAIRMAN CARR: Let's suppose we say,
9 "Okay, we'll not authorize any storage after January
10 1st of '96," and then the state's not ready and
11 there's no place to put it. What do we do then?

12 COMMISSIONER CURTISS: Yes. I would--
13 I'm not sure I'd go so far as to say they can't store
14 it. This area of possession, I guess, is 90 percent
15 of the law and where the waste is is where the waste
16 tends to be. We've seen that on spent nuclear fuel,
17 on low-level waste now as well.

18 I guess what I'd like to see is something
19 more aggressive in terms of the approach that we take
20 to specific applications for extended storage so that
21 we would say, for instance, that the applications for
22 disposal sites ought to be in, that there ought to be
23 linkage between a decision on extended on-site storage
24 and progress on the disposal front.

25 CHAIRMAN CARR: I thought that's what he

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1 said.

2 MR. BANGART: I didn't mention a specific
3 tie, but that is the kind of information that we'd be
4 looking at in terms of what the ultimate plans for
5 disposal are. We don't have specifics yet to say
6 would be sufficient to indicate to us that good, valid
7 progress is being made. We haven't outlined that.

8 COMMISSIONER CURTISS: Let me suggest two
9 of them because there's two in particular that I think
10 probably would focus the attention. If you said that
11 a state in which a licensee is that is seeking five
12 year storage would have to have an application in for
13 a disposal facility by January 1st of '94 and have the
14 review complete on that disposal facility two years
15 after January 1st of 1996. One, would that be
16 feasible? And, two, would it strike the balance
17 between ensuring that continued progress is made on
18 the disposal front and not at the same time throwing
19 the door open to extended on-site storage.

20 MR. BANGART: There is concern that's been
21 discussed within the staff and with the states as well
22 about our adopting an approach such as you outlined,
23 and that's that it could be viewed as rewriting the
24 Amendments Act. And, there is I think a view that's
25 shared by many of the states that our role under the

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1 Amendment Act is to assure that disposal occurs safely
2 or at least management occurs safely and that to go
3 beyond that is somewhat treading into dangerous
4 waters, and that is a counter or downside to such an
5 approach.

6 COMMISSIONER CURTISS: Well, what you're
7 proposing is to go two years beyond the date that the
8 Act today contemplates that there would be a disposal
9 facility or that the states would take title and
10 possession of the waste. That's what you're
11 proposing, two years additional.

12 Go ahead. I'm sorry, Dick.

13 MR. BANGART: And do it safely. And, as
14 we read the Act, we think that's well within the
15 provisions that are contained there.

16 MR. BERNERO: I think an important point
17 has to be made. We are not suggesting that the NRC by
18 any licensing of extended storage, a five year storage
19 term, is directing that the state in its program --

20 COMMISSIONER CURTISS: I understand that.

21 MR. BERNERO: -- go beyond the terms of
22 the Act. That's the state doing that. And, when we
23 look, take a hard look at --

24 COMMISSIONER CURTISS: We're facilitating
25 it.

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1 MR. BERNERO: We're enabling safe storage
2 of waste that is made necessary by delinquency in
3 implementing the Act on the part of the state.

4 If you go with a very strong approach
5 toward the state, as I said in my early remarks about
6 dropping the other shoe, it takes on the character of
7 a state by state low-level waste confidence finding to
8 say I do or do not have confidence you're going to get
9 there from here. And, you have to ask yourself what
10 are the federal decisions that go with that.

11 COMMISSIONER CURTISS: I understand. Let
12 me give you two hypothetical cases and ask you how you
13 would treat them under the policy that you've laid out
14 in the SECY paper.

15 Case A, a state comes in, a licensee comes
16 in in a state with a request for extended five year
17 storage from 1993 to 1998. That state has mounted an
18 aggressive challenge to the constitutionality of the
19 statute, has announced that it can't find a site
20 within its state that is acceptable under 10 CFR Part
21 61, and every apparent indication today or at the time
22 that the application is submitted, is that that state
23 won't meet the 1998 deadline. Scenario number one.

24 Hypothetical number two, a licensee comes
25 in, different state, asks for five year extended

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1 storage from 1993 to 1998 and the state has met every
2 milestone under the Act, has submitted an application,
3 the application is under review and will have a
4 disposal facility in operation in June of 1998.

5 Now, those two scenarios, would you treat
6 them any differently under what you've laid out here?
7 If you would, my question is on what basis, and it's
8 that that I'm trying to elicit because I do think
9 there is a basis, in my own personal view, to treat
10 those two states differently.

11 MR. BANGART: The former case, from our
12 Agency's responsibility standpoint, again, we would
13 have -- with our proposal, we would look at the safety
14 aspects associated with that particular situation and
15 whether it's the state that ends up with possession
16 and storage for perhaps a longer term period of time
17 than we even have outlined here or whether it's the
18 generator, it would be the safety question primarily
19 that we would be interested in. I think it would be
20 left to perhaps litigation to iron out the
21 constitutionality issues or any legal questions
22 related to this matter that would develop between the
23 generator and the state.

24 CHAIRMAN CARR: Well, doesn't this boil
25 down to a question of what are our responsibilities as

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1 the NRC under the Act?

2 COMMISSIONER CURTISS: I agree.

3 CHAIRMAN CARR: Do we have a
4 responsibility to enforce the Act?

5 COMMISSIONER CURTISS: If the upshot of
6 the failure to develop disposal capacity by 1996 is
7 that from here on our we're embarking on a policy that
8 permits storage at NRC licensees, I do think we have a
9 health and safety interest. Nine Mile is one example.

10 CHAIRMAN CARR: Well, maybe I'm wrong, but
11 I remember the Nine Mile incident. There was not a
12 health and safety problem there.

13 MR. BERNERO: This is the basement full
14 of --

15 CHAIRMAN CARR: Yes. It was determined
16 that wasn't a health and safety problem, it was just a
17 poor practice.

18 MR. BERNERO: We were delinquent perhaps
19 in not discovering it in a timely way. Clearly, that
20 kind of an environmental mess is a local health and
21 safety problem.

22 COMMISSIONER CURTISS: Let's flesh it out.
23 If we've said for high-level waste that you can store
24 high-level waste on-site for 100 years, I take it
25 there's no question that you can do it for low-level

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1 waste for at least that long. If that's the focus of
2 the question that we ask in 1993 or '96 or '98, is it
3 safe to store this waste on-site for an extended
4 period of time, I take it if that's the standard that
5 we apply to an application, then we're saying that we
6 are opening the door for extended on-site storage at
7 individual licensee sites and that troubles me.

8 CHAIRMAN CARR: Well, we didn't decide
9 that we were undermining the high-level waste storage
10 requirement by the Congress when we decided that if it
11 was available by the year 2025 we had confidence that
12 it could be stored on-site safely. I don't understand
13 the difference between that finding and the one we're
14 making today, if we make it.

15 COMMISSIONER CURTISS: Yes. I think the
16 difference between the two is that we have an
17 opportunity here ahead of time to address the
18 situation in a way that might bring some focused
19 progress to --

20 CHAIRMAN CARR: I guess we have an
21 opportunity, but I'm not sure there'll be any real
22 impact of it. I mean I don't think that we can sit
23 here and make the states move faster. Maybe you do.

24 MR. BANGART: We, perhaps, are more
25 encouraged than I'm hearing you state about recent

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1 signs about progress. Even in New York and Michigan,
2 there have been some actions this year that seem to
3 indicate that they are accepting responsibility on the
4 one hand despite their challenges on the other hand.

5 So, that fundamentally serves as the
6 premise on which our proposal was based and that's
7 let's wait and see how things unfold before we take
8 some more major kind of action.

9 CHAIRMAN CARR: I mean I could see that we
10 could say, "Okay, we'll just go for three years," and
11 that takes is up to 1996. Then at 1996 they'll come
12 in for an extension, if they haven't met their
13 deadline. Maybe I don't understand the kind of
14 leverage you think we have.

15 COMMISSIONER CURTISS: Well, yes. I do
16 think that this program in particular is an example of
17 a case where progress is slow in coming until you
18 reach a crisis stage. That's what led to the 1980
19 statute in the first place where the three sited
20 states said, "We're not going to accept the waste
21 beyond a date certain." It seems to me that here's an
22 ideal area --

23 CHAIRMAN CARR: That was the first
24 mistake.

25 COMMISSIONER CURTISS: Right. Here's an

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1 ideal area where we've got an opportunity to make a
2 decision that I think if we head in the path that the
3 staff is proposing and if I understand the standard,
4 which is our analysis as limited to health and safety
5 question, I see no outward limit on the period of time
6 where you'd say, "No, beyond that it's unacceptable."
7 I realize that the --

8 CHAIRMAN CARR: And I think it was a
9 policy decision that we said, "As a matter of policy,
10 we don't think we ought to go beyond five years." But
11 it wasn't a health and safety decision, it was a
12 policy decision.

13 COMMISSIONER CURTISS: Right.

14 MR. BANGART: The letters to the states,
15 to the northeastern states in large part, from the
16 three currently sited states, is bringing pressure.
17 It may not be a crisis yet, but it's bringing
18 pressure. As 1993 approaches, we think that the
19 provisions in the law are bringing pressure as well
20 and that's why we're seeing some signs this year of
21 acceptance of that responsibility.

22 COMMISSIONER CURTISS: That's all I have,
23 Ken. Go ahead.

24 CHAIRMAN CARR: I guess my real concern in
25 this, after I got the letter from the Forum, is what

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1 action did the NRC take in getting the states' inputs
2 into this policy or into this piece of paper? Can you
3 amplify that a little bit?

4 MR. BANGART: We did not go to the states
5 with a formal written request for input. However, we
6 feel that we have reflected the views of the states in
7 this paper as a result of the regular communication
8 pathways that I mentioned before. Primarily that's
9 through interaction with the Low-Level Waste Forum and
10 through the Technical Coordinating Committee and
11 through the workshops that we hold periodically with
12 the Agreement States that have a responsibility for
13 licensing a number of the facilities. I hoped the
14 states would share that view.

15 CHAIRMAN CARR: Well, another problem, it
16 seems to me, is if, as I understand has happened, is
17 the processors, such as SEG and so forth, are now
18 refusing to take waste from Michigan because they may
19 end up having it and no place to send it --

20 MS. SCHNEIDER: I can address that,
21 Chairman. Presently, there was a period of time last
22 year where the regulated -- Tennessee Regulatory
23 Agency did put a condition on the SEG and Quadrex
24 license to prohibit them receiving waste from states
25 that were out of compliance. But we had discussions

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1 with the regulatory agency and they amended the
2 license now that they will accept and process that
3 waste. However, they asked for certification from the
4 governor or the compact official and the regulatory
5 agency in that state that the waste will go back to
6 the state that's out of compliance.

7 CHAIRMAN CARR: They'll send it back if
8 there's no place else that will accept it?

9 MS. SCHNEIDER: If there's no place else,
10 it will go back to the generator, but they will
11 process it.

12 CHAIRMAN CARR: It goes back to the
13 generator?

14 MS. SCHNEIDER: At this time. The waste
15 can come into these processors to be volume reduced
16 and then goes back to the generator.

17 CHAIRMAN CARR: I guess if we do take the
18 approach you're recommending here, when do we make the
19 review of whether it becomes a public health and
20 safety problem? It might become that during that five
21 year period or might it not?

22 MR. BANGART: Well, we think we do have
23 guidance in place that, from a radiological safety
24 standpoint, will assure safety storage for a period of
25 up to five years.

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1 CHAIRMAN CARR: And we're going to do that
2 by inspection to assure ourselves that that, in fact,
3 is what's happening?

4 MR. BANGART: In part for those facilities
5 that don't need specific NRC approval, yes. For other
6 licensees that need that approval, that would be done
7 not only by inspection, but as a part of the licensing
8 review.

9 CHAIRMAN CARR: If some states which are
10 talking about centralized storage facilities, if they
11 elect to do that, how are we going to decide what
12 financial assurance they've got to put in place?

13 MR. BANGART: Then they would be subject
14 to the financial assurance requirements that are
15 contained in our regulations when the decommissioning
16 rule was promulgated. There are dollar amounts
17 spelled out in those regulations and they would be
18 captured by that possibly if the quantities and types
19 of radionuclides exceeded the thresholds that are
20 contained therein.

21 CHAIRMAN CARR: So, we do have to face
22 that issue still?

23 MR. BANGART: Yes.

24 CHAIRMAN CARR: I guess it's kind of
25 interesting me that the state is going to license

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1 itself in the Agreement State area. Is there a
2 conflict of interest there where the state agency
3 responsible for licensing the storage is also the
4 licensee?

5 MS. SCHNEIDER: I'll address that one.
6 It's conceivable. We were taking a look at some of
7 the plans, maybe a situation like we have with
8 Illinois where one agency is responsible for both the
9 regulatory and the promotional aspects. But if you
10 take a look at New York right now and their plan, they
11 call for New York -- NYSERTA, the energy group, would
12 be the agency who's responsible and the regulatory
13 agency would regulate them.

14 It appears that in most of the states that
15 it would be one agency regulating another, which we
16 don't have a problem with.

17 CHAIRMAN CARR: Is Illinois going to
18 separate their functions, do you know?

19 MS. SCHNEIDER: At this time, no.
20 Illinois is still -- both functions are in one agency,
21 although they have a new group they put together for
22 the oversight, so that they'll make a decision on the
23 license application oversee the siting process. There
24 is possibly one other state that it appears that it
25 might be the same agency has both regulatory and

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1 promotional. It's not a state where they have a site,
2 but Maryland is one of the states that may be affected
3 because they're in the Appalachian compact, but there
4 may be a storage issue. Right now we're not sure.
5 That's an area we'll still have to pursue and keep
6 track of and monitor. We've always recommended though
7 that there be a separation and we continue to do so
8 and work with the states in that area.

9 CHAIRMAN CARR: What role is NEPA going to
10 play in these storage sites, either the big ones or
11 the small ones? Are we going to have to do an
12 environmental assessment? Are you going to do a
13 generic one or how are we going to approach that?

14 MR. BANGART: We'll have to look at each
15 individual license application and decide whether or
16 not an assessment is called for. We don't have any
17 plans at this point in time to do any generic
18 environmental impact statements on this matter. It
19 would -- that question, we believe, would only be
20 raised if we got into a point where there were a
21 legitimate need in the country for a longer term
22 storage that clearly could have health and safety
23 impacts or major policy implications associated with
24 it.

25 CHAIRMAN CARR: I visited a utility the

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1 other day that has a major building for low-level
2 waste storage in anticipation of having to do this. I
3 asked them if they were also planning to store non-
4 utility waste and they said they weren't planning to
5 but they had been approached. How are we going to
6 handle that piece of the problem? Is that a problem
7 for us if the non-utility waste is stored on-site at a
8 utility?

9 MR. BERNERO: It's not a safety problem,
10 it's an institutional issue of some importance. There
11 has been dialogue for some time toward that as a
12 solution because many reactors have abundant capacity
13 to store waste and, in some cases, they are virtually
14 the sold generator in the state. They generate the
15 lion's share of the low-level waste. It can be
16 handled safely. Typically the user waste other than
17 reactor is so much smaller in volume that it can be
18 readily taken into account. Some reactors have used
19 the terminated building number 2 as the storage
20 building, things like that, and they've ended up with
21 very robust structures.

22 But technically, a reasonably sound
23 building and the high surveillance are what you need
24 for safe storage in the near-term. Long-term storage,
25 as Dick said earlier during the presentation, where it

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1 gets to be a substantial length of time and approaches
2 de facto near-surface disposal, just indefinite term,
3 then you're talking about more robust, concrete
4 structures.

5 CHAIRMAN CARR: More if it's an Agreement
6 State and they're worried about it off-site. If it
7 comes on-site, is it our problem instead of theirs?

8 MR. BERNERO: Well, we would license
9 what's on-site. It's basically -- the reactor's waste
10 storage with an increment of waste from other users,
11 if such a deal is struck as an interim solution.

12 MR. TAYLOR: Did you read that guidance?

13 MR. BANGART: We've addressed that
14 particular scenario in Generic Letter 85-14. In that
15 generic letter we've defined the exclusion area as the
16 boundary between Agreement State licensing and NRC
17 licensing on-site.

18 CHAIRMAN CARR: Okay.

19 MR. BANGART: This does go on to say that
20 a Part 30 license would be needed for such a
21 commercial storage facility at a reactor site and
22 identifies the fact that environmental impacts of such
23 an activity would also have to be evaluated by the
24 applicant in his request for such storage.

25 CHAIRMAN CARR: I guess to follow-up on

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1 Commissioner Remick's question about what the states
2 would do in -- I mean what the generators would do in
3 '93, the way I read it, if the generators ask and the
4 state does not take it, then the rebates go to the
5 generator instead of the state. Is that right?

6 MR. BANGART: That's correct. Twenty-five
7 percent of the rebates that have been collected since
8 1990 would begin to go back to the generators on a
9 monthly basis.

10 CHAIRMAN CARR: It seems to me like that'd
11 be a benefit to the generator. Why wouldn't he ask
12 for that? And that also affects the amount of money
13 the state's got then to build their facility. So --

14 COMMISSIONER CURTISS: The idea is if the
15 state hasn't met its obligation to have a site by '93,
16 then the funds that the generators have been providing
17 the states up until that point, which are significant,
18 ought to begin flowing back to the generators --

19 CHAIRMAN CARR: That's my opinion.

20 COMMISSIONER CURTISS: -- so that they
21 can --

22 CHAIRMAN CARR: It seems to me they would
23 automatically apply, the generators would. Maybe I'm
24 missing something.

25 MR. BANGART: I think you've hit on a good

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1 point there.

2 MR. BERNERO: Except that ultimately the
3 state as the agent responsible for disposal is in a
4 position to back feed whatever costs are needed and
5 boy, they make that point repeatedly. "If it's going
6 to cost us \$300.00 a cubic foot to bury the waste,
7 that's what you're going to pay. If it's \$100.00 a
8 cubic foot, that's what you're going to pay."

9 I think there's an orchestration that goes
10 on, very complex relationship, that the generator
11 can't freely flow the money in and pull the money back
12 and take steps to pull it back without the risk of the
13 state forced into action is just going to levy the
14 charges right back on the generator. I don't think
15 you get to keep the money and spend it, is what I'm
16 saying.

17 CHAIRMAN CARR: No, but he can't spend it
18 either.

19 MR. BERNERO: No, no. Yes. The only
20 solution for the state is to be pushed, kicking and
21 screaming, into compliance with the Act. Better late
22 than never, but that's the only solution. It's in the
23 best interest of all the parties that it get there in
24 a timely way, economic best interest.

25 CHAIRMAN CARR: But take title provisions

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1 of the Act, how do you think they're going to apply to
2 the mixed waste storage? For example, will states
3 have sufficient time to apply for and receive a Part B
4 permit in the Hazardous Waste Program under RCRA?

5 MR. BANGART: The states or generators--
6 I'm sorry, generators, are finding themselves
7 currently in a difficult position relative to storage,
8 vis-a-vis the land disposal restrictions specifically.
9 EPA has recently come out with some guidance related
10 to alternatives to storage of mixed waste. They have
11 yet to come out with their final position on
12 compliance aspects of the land disposal restrictions.
13 They're scheduled to come out shortly.

14 That particular question may be clarified
15 somewhat when the EPA guidance on this question is
16 promulgated. But right now, there is no option for
17 generators but to store such mixed waste when there is
18 no treatment capability available to them.

19 MR. BERNERO: Treatment or disposal.
20 They're in violation in storing it.

21 CHAIRMAN CARR: You're in violation if you
22 just have it.

23 MR. BERNERO: Yes.

24 MR. BANGART: Yes.

25 CHAIRMAN CARR: Any other questions?

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1 COMMISSIONER CURTISS: Yes. Let me just
2 summarize the concern that I have here. This has been
3 a helpful presentation.

4 It does seem to me that the health and
5 safety interest that we have in this Agency we ought
6 to focus on is the question that increasingly troubles
7 me and I think others, particularly with the
8 utilities. We've got a period of time now when
9 utilities are under increasing pressure to reduce O&M
10 expenses, to become competitive, to keep the rates
11 down.

12 I fear that, as they have with high-level
13 waste, with spent fuel pool programs and pin
14 consolidation and rod consolidation and dry cask
15 storage and trans-shipment and the other options that
16 they are now having to pursue because of the progress
17 on the high-level waste program, that we will see
18 exactly the same situation with low-level waste where
19 we are asking or allowing or facilitating utilities
20 that in my judgment ought to be focusing their
21 attention on safe operation of the reactor and to the
22 maximum extent possible allocating the resources to do
23 that, being asked to become waste management
24 companies.

25 Now, I'll concede for the sake of argument

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1 that in the narrow health and safety context that
2 there's probably not a concern with low-level waste
3 disposal on-site. There are instances, just as a
4 footnote, where I think we've pointed to exactly that
5 same kind of thing. We've identified the fire hazards
6 associated with waste oil, the decision to deregulate
7 scintillation vials in 1981, pointed to that very same
8 fire hazard. The people who testified in Congress
9 pointed to the small generators and the very limited
10 space that they have available to store this waste and
11 the potential that you'll either store it on the roof
12 or you'll find other creative ways to get rid of it
13 given the storage problem, and it does seem to me that
14 you can make a pretty compelling argument that there
15 are health and safety concerns in isolated instances
16 that arise from pursuit of a policy that encourages or
17 facilitates extended storage beyond what we think is
18 prudent or what the program here at the federal level
19 contemplated. It's, as I say, a health and safety
20 concern that I think you can put your finger on in
21 isolated cases.

22 I do think you're asking the wrong
23 question when you say, "Is there a health and safety
24 concern with on-site storage," whether it's with
25 respect to spent nuclear fuel or low-level waste

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1 disposal. That is the question that we asked in the
2 waste confidence proceeding. That's the question we
3 talked about here. But it seems to me the question
4 is, from a health and safety standpoint, is it
5 preferable to pursue a policy of this nature which
6 provides for on-site storage, or is it preferable to
7 have and emphasize the progress to continue that needs
8 to be made, and I grant that it's being made right
9 now, on the development of disposal sites?

10 It's because I come down saying that it's
11 clearly preferable to have the disposal facilities
12 that I look at this program and think we ought to
13 explore ways where, to the extent that we can, not
14 just purely as a legal question, but as a policy
15 question, we can approach this issue of extended on-
16 site storage with an eye towards how we can continue
17 to encourage progress in the development of these
18 sites.

19 The program that you've outlined here and
20 the narrow focus on the health and safety question
21 doesn't assuage the concern that I have that it looks
22 to me as if a decision to authorize storage through
23 1998 will lead to extended storage beyond that because
24 the narrow standard that you're applying is can you do
25 it safely. I don't dispute that with proper

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1 regulatory oversight that that can be done safely.
2 But it does seem to me that we have opportunities
3 here, and particularly given the states that are
4 having problems and the reason they're having
5 problems, that a 16 or an 18 year program for the
6 development of new disposal capacity, 16 years behind
7 us when we reach 1996, ought to be a basis for saying,
8 "What is it that we can do in addition to the direct
9 responsibilities that we have to license those sites
10 in non-agreement states, to provide guidance on
11 alternatives, to carry out our BRC responsibilities
12 and the other direct responsibilities that we have in
13 the Act."

14 From 1993 on there isn't the pressure that
15 you've alluded to, Dick, that the sited states have
16 brought to bear most effectively to date to ensure the
17 progress gets made. In 1993, they shut down, and in
18 my view that leverage, coming from the sited states,
19 is completely gone. For that reason, it seems to me
20 the '93 to '96 period and what happens beyond '96 in
21 terms of pushing the program forward is going to be a
22 key question. I'd be more aggressive, I think, in
23 looking at connections that can be made between on-
24 site storage and progress on the waste program.

25 You've got a perfect example of that by

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1 comparison in the high-level waste area where there
2 are linkages between the MRS storage program and the
3 high-level waste disposal facility. It is that
4 concept to drive progress on what I think Congress
5 intended and we would like to see with disposal
6 capacity that I think we ought to be more searching in
7 our effort to identify those things that we can do to
8 ensure that that progress comes about, rather than
9 simply to say, "It's safe. You can do it safely and
10 we'll permit it now for five years and I think
11 ultimately an additional five years and five years
12 beyond that."

13 What's really wrapping the problem around
14 the axle at this point, I think, is not technical
15 questions. There's no reason you can't license one of
16 these facilities in 18 years for political
17 considerations and the time that's available to carry
18 that program out, I think, will be filled by political
19 considerations that take maximum advantage of programs
20 like the opportunity to store on-site. We know the
21 reactors that have been approached, that have been
22 asked to serve as on-site storage for extended periods
23 of time. In fact, some of them have been approached
24 and are being asked to serve as the disposal facility.

25 So, it's with a great deal of concern, I

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1 guess, that I look at what you proposed here without
2 any emphasis on the need to encourage progress beyond
3 the very narrow "can we do it safely" focus in that
4 1996 to 1998 time frame.

5 MR. TAYLOR: I think the staff shares your
6 view that we'd much prefer and would want to see the
7 progress to disposal, whatever it is making the
8 connection between the reality of what may occur here
9 and how we would -- what method do we use to draw the
10 line in any requests for further storage. What should
11 be -- you know, making that connection and that's what
12 really you're suggesting, is part of our struggle.

13 Would you like to add to that, Bob?

14 MR. BERNERO: Yes.

15 MR. TAYLOR: I mean I'd like to see -- I
16 think we all share your view that the best thing is to
17 get the disposal sites in operation.

18 MR. BERNERO: Really, if you look at the
19 narrow question, can it be done safely, that has an
20 obvious answer. But if you look at the broader
21 question that you posed, there are really two policy
22 options. They are policy options, not mandatory
23 safety options. One is to say, "We won't countenance
24 any extended storage after a certain date," and pick a
25 date, and we will take I'll call them waste confidence

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1 type decisions deriving from that, that we'll start to
2 come to grips with the generation of the waste.

3 The other is to take as a matter of policy
4 the assumption that any storage after a certain date
5 is indeed indefinite storage and we will impose as a
6 matter of policy indefinite storage criteria, vault-
7 like structures, less dependence on surveillance, et
8 cetera, et cetera. With the storage of spent fuel on
9 a reactor site, which is the solution for this growth
10 that we have encountered, we have required a great
11 degree of robustness, passivity that the thing can
12 stand, it's too big to steal, it's too big to knock
13 over and we could, as a matter of policy, say,
14 "Storage after a certain date is too indefinite to be
15 treated with as a short-term thing. We will consider
16 it, but we will license it only with very severe
17 requirements, " the requirements to go with 20 years
18 or something like that.

19 MR. TAYLOR: Or more.

20 MR. BERNERO: Or more.

21 COMMISSIONER CURTISS: I haven't even
22 focused on the research question and your comment
23 suggests that. I suspect if you went back and looked
24 at what we've done, even aside from the health and
25 safety question, as a matter of applying our resources

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1 to spent fuel pool expansions and high density racks
2 and trans-shipment and dry cask storage and pin
3 consolidation and all the other various activities
4 that have been undertaken in support of leaking spent
5 fuel pools where we've had to examine that question,
6 seismic impacts on spent fuel pools, it seems to me
7 that health and safety aside we could make a pretty
8 strong argument that we've expended a considerable
9 amount of our Agency's resources that could have been
10 dedicated to other things maybe more productively than
11 the health and safety area than we ended up doing in
12 the spent fuel arena.

13 MR. BERNERO: In retrospect, certainly I
14 would go back and say we could have drawn a line in
15 spent fuel densification or compaction to say, "No
16 more than X," or, "No more than one time," and from
17 there on it's dry storage.

18 COMMISSIONER CURTISS: Yes. Those broader
19 considerations, Bob, the question of resources, health
20 and safety in the broader sense, lead me to conclude
21 that we ought to take, as I say, a more careful look
22 here at tying the decisions that are made on extended
23 on-site storage now for two years past the '96
24 deadline to some mechanism or program, some focus on
25 the question of what kind of progress is being made

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1 here.

2 CHAIRMAN CARR: It would get so difficult,
3 they didn't really want to ask.

4 MR. BERNERO: What is our other shoe?
5 What is the other shoe we're going to drop?

6 MR. TAYLOR: We talked about this.

7 COMMISSIONER CURTISS: It's exactly the
8 same kind of consideration that I personally think has
9 led us to ask DOE to take greater than Class C, for
10 example. Haven't been able to identify health and
11 safety concern in the narrow sense, but it's led to
12 the proposal that we pursue a particular course of
13 action there very much akin to the kinds of
14 considerations that I think if you look at this
15 question more broadly ought to go into the evaluation
16 here and including things like resources, health and
17 safety in the broad sense and what I think is an NRC
18 role in bringing about progress on disposal. That's
19 in our interest, it's in the state's interest, it's
20 Congress' objectives.

21 That's all I have.

22 CHAIRMAN CARR: Any other comments?

23 Well, I'd like to thank the staff for this
24 very fine briefing. As is evident from the briefing,
25 the staff has thoughtfully considered the advantages

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1 and disadvantages of various approaches that the
2 Commission could use in discharging its
3 responsibilities with respect to the title transfer
4 provisions. The issues associated with these
5 approaches primarily on the subject of interim storage
6 of low-level waste.

7 Given the slow progress to date by some
8 states in developing new low-level waste disposal
9 facilities, it appears that such storage will be
10 necessary until new disposal facilities come on-line
11 and begin disposing the waste safely.

12 On October 23rd, I received a letter from
13 the Low-Level Radioactive Waste Forum which requested
14 the NRC to seek comment from state and compact
15 representatives through the Forum prior to any
16 Commission decision on the staff's recommended
17 approach discussed in today's meeting.

18 The Commission will consider the staff's
19 recommendation over the next several weeks. If states
20 and other interested parties have strong views on this
21 subject, they should communicate them expeditiously so
22 the views can be considered by the Commission in its
23 deliberations. I suggest Mr. Chilk correspond
24 immediately with the Forum to solicit the views of the
25 states and compacts on the title transfer provisions

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1 of the Act.

2 In addition and in view of the important
3 responsibilities of the states in implementing the
4 Act, I urge the staff to cooperate fully with the
5 states and compacts and to solicit their views in the
6 future on such significant policy issues involved with
7 the implementation of the Low-Level Radioactive Waste
8 Policy Act prior to providing the recommendations to
9 the Commission.

10 Do my fellow Commissioners have any other
11 comments?

12 If not, we stand adjourned.

13 (Whereupon, at 11:23 a.m., the above-
14 entitled matter was concluded.)

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TITLE TRANSFER OF LOW-LEVEL WASTE

PLACE OF MEETING: ROCKVILLE, MARYLAND

DATE OF MEETING: OCTOBER 29, 1990

were transcribed by me. I further certify that said transcription
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**LOW-LEVEL RADIOACTIVE WASTE POLICY
AMENDMENTS ACT TITLE TRANSFER AND
POSSESSION PROVISIONS**

OCTOBER 29, 1990

RICHARD L. BANGART

Contact: Richard L. Bangart
Phone: 49-23340

BRIEFING OVERVIEW

- 0 COMMISSION REQUEST**
- 0 BACKGROUND**
- 0 EVALUATION OF ISSUES**
- 0 EVALUATION OF CONCEPTUAL APPROACHES**
- 0 FUTURE STAFF ACTIONS AND
RECOMMENDATIONS**

COMMISSION REQUEST

- 0 EVALUATE ISSUES**
- 0 EVALUATE ADVANTAGES AND DISADVANTAGES**
- 0 DEVELOP SCHEDULE FOR NRC ACTIONS**

BACKGROUND

- O 1993 AND 1996 DEADLINES OF LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT (LLRWPA)**
- O GOVERNORS CERTIFIED RELIANCE ON STORAGE**
- O STORAGE PERIOD MAY EXTEND BEYOND 1996**

ISSUES

- o AMENDMENTS ACT INTENT ACHIEVABLE**
- o STAFF EVALUATION**
 - REGULATORY FRAMEWORK ADEQUACY**
 - ISSUANCE OF STORAGE LICENSES AFTER 1996**
 - LENGTH OF TIME FOR STORAGE APPROVAL**

EXISTING REGULATORY FRAMEWORK

- O OFFICE OF THE GENERAL COUNSEL REVIEW**
- O EXISTING REGULATIONS AUTHORIZE OWNERSHIP**
- O POSSESSION REQUIRES LICENSE**
- O EXISTING REGULATIONS AND GUIDANCE ADEQUATE FOR INTERIM STORAGE**

ISSUANCE OF STORAGE LICENSES AFTER 1996 AND LENGTH OF TIME FOR STORAGE

- O 1993 STORAGE APPROVALS AUTHORIZED FOR
SINGLE FIVE-YEAR PERIOD**
- O NO PROHIBITION AGAINST STORAGE BEYOND
1996**
- O LONG-TERM OR INDEFINITE PERIOD STORAGE
APPROVALS INCONSISTENT WITH LLRWPA
NATIONAL POLICY**

CONCEPTUAL APPROACH ADVANTAGES AND DISADVANTAGES

- O AMEND REGULATIONS**
- O LETTER TO GOVERNORS AND OVERSEE
NATIONAL PROGRESS**
- O ISSUE POLICY STATEMENT**
- O No ACTION**

AMEND REGULATIONS

- O EXISTING REGULATIONS AND GUIDANCE
ADEQUATE FOR INTERIM STORAGE**
- O RULEMAKING UNNECESSARY**

LETTER TO GOVERNORS

- O GUIDANCE WOULD ADDRESS REGULATORY AND TECHNICAL ISSUES ASSOCIATED WITH TITLE AND POSSESSION**
- O PRECEDENT ESTABLISHED BY LETTERS TO GOVERNORS PRIOR TO LLRWPAA 1990 MILESTONE**
- O CHAIRMAN'S SIGNATURE UNDERSCORES IMPORTANCE OF ISSUE**
- O FAVORED BY STAFF**

ISSUE POLICY STATEMENT

- 0 TIMEFRAME LENGTHY**
- 0 RESOURCE INTENSIVE**
- 0 POSSIBLY PREMATURE**

NO ACTION

- O CALLS FOR MONITOR ROLE ONLY**
- O NEED TO EMPHASIZE NRC'S POSITION ON STORAGE**

RECOMMENDATIONS

- 0 COMMISSION APPROVE ISSUANCE
OF LETTERS TO GOVERNORS**
- 0 COMMISSION APPROVE PLANS TO
AUTHORIZE STORAGE USING EXISTING
GUIDANCE**
- 0 STAFF CONTINUE TO MONITOR
PROGRESS AND IDENTIFY ISSUES**