

JAN 05 1993

MEMORANDUM FOR: James H. Sniezek
Deputy Executive Director for
Nuclear Reactor Regulation,
Regional Operations, and Research

FROM: Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

SUBJECT: MEDIA BRIEFING BACKGROUND PAPER

The enclosed media briefing background paper has been revised, as you requested. The paper includes background information on the Low-Level Radioactive Waste Policy Amendments Act of 1985, the U.S. Supreme Court decision, and the status of new low-level waste (LLW) disposal facility development. Related regulatory actions are summarized, which include the proposed rulemaking currently under development that would establish criteria for on-site storage of LLW after January 1, 1996.

If you have any questions please contact Robert Nelson, of my staff, at 504-2004.

Original signed by
Guy A. Arlotto

for Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure:
Media Briefing Background Paper
cc w/encl: H. Thompson, EDO

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STATE COMPLIANCE WITH 1993 AND 1996 MILESTONES OF THE LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985

Background:

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) (Pub. L. 99-240) establishes a series of milestones, penalties, and incentives for regional compacts and States to promote progress toward being able to manage their low-level radioactive waste (LLW) by 1993. However, slow State progress in developing new LLW disposal facilities may result in the storage of LLW at many generator sites, beginning January 1, 1993. This paper includes background information on the LLRWPA and the status of LLW disposal facility development. Related regulatory actions are summarized, including a proposed rulemaking that would establish criteria for on-site storage of LLW after January 1, 1996.

LLW Disposal:

Low-level radioactive waste is a general term for a variety of radioactively contaminated wastes generated by nuclear power plants and related industries, hospitals, medical and educational research institutions, private and governmental laboratories, and other commercial activities that use radioactive materials as a part of their normal operations. Approximately 1.4 million cubic feet of LLW were disposed of in 1991. LLW is currently disposed of using shallow land burial at privately operated facilities located in the States of Nevada, South Carolina, and Washington.

The LLRWPA requires the sited States of Nevada, South Carolina, and Washington to make disposal capacity available to LLW generators until December 31, 1992, subject to: (1) the States and compacts meeting the other milestones of the LLRWPA; (2) the sites remaining operational; and (3) received waste being within site-specific volume limitations. Although the Washington facility is expected to remain open serving the Northwest Compact (its compact) and the Rocky Mountain Compact, the Nevada facility is expected to close on December 31, 1992. The facility in South Carolina will remain open until January 1, 1996, subject to various conditions. However, the facility will close permanently to out-of-region waste on July 1, 1994. The importation of out-of-region waste, during the period of January 1, 1993, to June 30, 1994, will not be approved for States or compact regions that are not making adequate progress toward providing for disposal of their own LLW.

At present, nine compacts have been formed, representing 42 States. The accompanying figure shows the current arrangements of compacts and unaffiliated States (i.e., those States not in a compact).

To help ensure that the States make adequate progress to develop new LLW disposal facilities, the LLRWPA established six milestones by which the States should make decisions and commit to certain actions. The majority of the States met the requirements of the three milestone dates that had passed

by January 1990. However, only the Central, Central-Midwest, and Southern Compact met the January 1, 1992, milestone requirement, where their respective host States of Nebraska, Illinois, and California, submitted applications for disposal facilities. The State of Texas conformed to this milestone on March 2, 1992, by submitting a disposal facility license application. However, no State is expected to have a new LLW disposal facility operational on January 1, 1993, as envisioned by the LLRWPA. The remaining milestones of the LLRWPA, as it was enacted, are:

January 1, 1993 - If a State or compact cannot provide for disposal of its LLW after January 1, 1993, generators can request the State to take title to and possession of the generated waste. The State also becomes liable for damages as a consequence of failure to take possession of the waste. In 1993, States may avoid taking title and possession of the waste and assuming liability, but will forfeit the surcharge rebates established by the LLRWPA.

January 1, 1996 - The States, upon proper notice by the generator or owner, shall take title to and be obligated to take possession of LLW. The State will also be liable for all damages directly or indirectly incurred by the generator or owner if it fails to take possession as soon after January 1, 1996, as the generator or owner notifies the State that the waste is available for shipment.

The section of the LLRWPA requiring the States to take title to and possession of the generated waste by January 1, 1996 (often referred to as the "take-title" provision), was held to be unconstitutional by the U.S. Supreme Court, on June 12, 1992.

On October 9, 1992, the Illinois Low-Level Radioactive Waste Disposal Facility Siting Commission voted unanimously to reject the LLW disposal site proposed by the Illinois Department of Nuclear Safety (IDNS). In support of this decision, the Governor of Illinois directed the IDNS to stop all efforts to locate a facility at the selected site, at Martinsville. The facility had been scheduled for operation early in 1995.

On December 8, 1992, the Boyd County Local Monitoring Committee sponsored a straw poll of county residents to measure the level of public acceptance of the Boyd County site in Nebraska. Over 90 percent of those voting in the election opposed the construction of the facility. After the poll results were announced, Governor Nelson stated that he intends to seek a court ruling on whether the vote allows Nebraska to stop the siting process. In a letter to the Central Interstate LLW Compact Commissioners, dated December 23, 1992, Governor Nelson requested the Commissioners to withdraw Boyd County from consideration. If the site is not withdrawn from consideration by January 8, 1993, Governor Nelson stated that he would request the Nebraska Attorney General to take the matter to court to determine if there are legal avenues that would allow the State to prevent siting of the facility in Boyd County.

Only two new facilities are now scheduled to be operational by January 1996, those in California and North Carolina, and the latter will replace the existing Barnwell facility. LLW disposal facilities in the host States of

Maine, Massachusetts, New Jersey, Pennsylvania, Texas, and Vermont are forecast to be operational between the period 1996 and 1999. There are no schedules yet available for the host States of Connecticut, Illinois, Nebraska, New York, and Ohio. The unaffiliated States of Michigan, New Hampshire, Rhode Island, District of Columbia, and Puerto Rico do not have a disposal site under development. A number of States believe that they may be able to fulfill their responsibilities through the contracting and/or compact process, but there is no evidence that such approaches will work. The accompanying table shows the dates by which compact host States and unaffiliated States accomplished, or expect to accomplish, key steps in developing new disposal facilities.

Since no new LLW disposal facilities were operational by January 1, 1993, and the compact commissions that control the existing LLW disposal sites have either closed their facility or set conditions on receiving LLW from outside their regional compacts, some licensees who generate LLW may be forced to store their LLW on-site, until disposal capacity is available, unless other arrangements for storage or disposal can be made. Nearly all the Governors' Certifications submitted to meet the 1990 milestone of the LLRWPA indicated that the State planned on interim storage by waste generators during the 1993 through 1996 period. However, since the South Carolina facility may be available to many generators, there will be a mixed pattern of disposal and storage during this time period.

Regulatory Actions:

Slow progress in some States and compacts toward meeting the January 1, 1996, milestone of the LLRWPA has raised Commission concerns associated with on-site storage of LLW. Although the public health and safety can be adequately protected if LLW is stored, the public health and safety will be enhanced by disposal, rather than long-term, indefinite storage of LLW. Disposal of LLW in a limited number of facilities licensed under existing regulations (10 CFR Part 61 or Agreement State equivalents) will provide better protection of the public health and safety and environment than storage at hundreds of sites around the country. Permanent disposal of LLW has always been the preferred option for managing LLW, as reflected in the LLRWPA. Because of these concerns and as a result of the Commission's consideration of the staff's analysis in SECY-91-306, "Analysis of Comments Received on Title-Transfer and Possession Provisions of the Low-Level Radioactive Waste Policy Amendments Act of 1985," the Nuclear Regulatory Commission is proposing to amend its regulations, to establish license condition requirements for on-site storage of LLW, by licensees, after January 1, 1996.

In this proposed rulemaking, the Commission is restating and emphasizing its position that it will not look favorably upon on-site storage of LLW by generators after January 1, 1996. Under the proposed amendments, on-site storage of LLW would not be permitted after January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site), unless the licensee could document that it has exhausted other reasonable waste management options. Such options include taking all reasonable steps to contract, either directly or through the State, for disposal of the waste.

This proposed rulemaking would supplement, but not supersede, the existing regulatory framework applicable to storage of LLW, and the conditions in themselves would not authorize on-site storage. On-site storage of LLW at reactors would continue to be subject to 10 CFR 50.59 evaluations (which allow licensees to store provided there is no outstanding safety issue), as well as all other regulatory requirements currently in place. Licensees should continue to use appropriate regulatory guidance for on-site storage of LLW.

Current Status:

At the Commission's request, the staff prepared and submitted the proposed rulemaking on storage of LLW beyond 1996, to the Commission, for consideration and approval, on May 8, 1992.

On June 19, 1992, the United States Supreme Court issued its decision, in New York v. United States, regarding the constitutionality of the LLRWPA. The Court decided that the take-title provision of the LLRWPA, which was to take effect on January 1, 1996, is unconstitutional, but severable from the remainder of the act. The Court found the take-title provision "...inconsistent with the federal structure of our government established by the Constitution." The Court upheld the remainder of the LLRWPA, including the other incentives for States to assume responsibility for LLW generated within their borders.

A revised proposed rulemaking package was submitted to the Commission on November 13, 1992. On December 17, 1992, the Commission informed the staff that it had approved the proposed rulemaking for publication. The staff expects the proposed rule to be published in the Federal Register in February 1993.

Highlights of this media briefing background paper can be found in the enclosure.

Contact:

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LOW-LEVEL RADIOACTIVE WASTE COMPACT STATUS

AUGUST 1992



*Operating LLW Disposal Sites

Note: National LLW volume for 1991 = 1.4 million cubic feet disposed

SLB = shallow land burial

EMAGV = Earth mounded above grade vault

BGCC = below ground concrete casks

Source: Office of State Programs, NRC

BP20 (12/92)

Actual and Estimated Dates for
Completing Steps in Facility Development
(Estimated Dates Obtained from Compacts/States)

<u>Compact/Host State</u>	<u>Select Site</u>	<u>Submit License Application</u>	<u>Operate Facility</u>
Appalachian/Pennsylvania	Late 1994	Late 1994	Mid-1997
Central/Nebraska	Dec 1989	Jul 1990	Unscheduled
Central Midwest/Illinois	Oct 1992	Dec 1991	---
Midwest/Ohio	Unscheduled	Unscheduled	Unscheduled
Northeast/Connecticut & New Jersey	Unscheduled 1994	Unscheduled Mid-1995	Unscheduled Late 1997
Southeast/North Carolina	End 1993	Dec 1993	Jan 1996
Southwest/California	Mar 1988	Dec 1989	Jul 1994
<u>Unaffiliated States</u>			
Maine	1993	Jan 1994	End 1996
Massachusetts	Jun 1994	Nov 1994	Late 1996
New York	Unscheduled	Unscheduled	Unscheduled
Texas	Aug 1991	Mar 1992	Jun 1996
Vermont	Feb 1994	1996	1999

HIGHLIGHTS

STATE COMPLIANCE WITH 1993 AND 1996 MILESTONES OF THE LOW-LEVEL RADIOACTIVE WASTE POLICY AMENDMENTS ACT OF 1985 (LLRWPA)

LLRWPA established milestones, incentives, and penalties for States to develop new low-level radioactive waste (LLW) disposal facilities.

- .. Milestones were established in 1986, 1988, 1990, 1992, 1993, and 1996.
- .. Waste disposal surcharges and take-title and possession provisions are penalties for failure to comply.
- .. Partial rebate of surcharges to States provides incentive in the form of financial assistance.
- .. U.S. Supreme Court has held the 1996 take-title provision to be unconstitutional.

Majority of States met the first three milestones.

Only four States (California, Illinois, Nebraska, and Texas) met the 1992 milestone, and only California and North Carolina are expected to meet the 1996 milestone.

On-site storage of LLW at some generator sites is expected after January 1, 1993, because of lack of access to disposal facilities, especially in the States of Michigan, New Hampshire, and Rhode Island, and the District of Columbia and Puerto Rico.

Existing Nuclear Regulatory Commission guidance, in conjunction with current regulations, provides the regulatory and licensing framework for LLW storage.

Although public health and safety can be protected if LLW is stored, public health and safety will be enhanced by disposal.

NRC does not look favorably upon on-site storage of LLW.

Commission has approved for publication a proposed rulemaking that would establish criteria for on-site storage of LLW after January 1, 1996. Licensees would have to exhaust all other waste management options before storing LLW on-site. Options include contracting, either directly or indirectly, through the State, for disposal.

Proposed rulemaking would supplement, but not supersede, existing regulatory framework. Conditions of proposed rulemaking, in themselves, would not authorize on-site storage.

Enclosure