



OFFICE OF THE  
SECRETARY

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

RELEASED TO THE PDR

1/7/93

date

initials

December 17, 1992

MEMORANDUM FOR: James M. Taylor  
Executive Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: SECY-92-380 - NOTICE OF PROPOSED RULEMAKING  
TO ESTABLISH PROCEDURES AND CRITERIA FOR ON-  
SITE STORAGE OF LOW-LEVEL RADIOACTIVE WASTE,  
AFTER JANUARY 1, 1996

The Commission (with all Commissioners agreeing) has approved publication of the proposed rulemaking to amend 10 CFR Parts 30, 40, 50, 70, and 72 to set forth procedures and criteria that would apply to on-site storage of low-level waste beyond January 1, 1996. The staff should incorporate the changes in the attachment.

The revised Federal Register notice should be forwarded to the Secretary for publication.

(EDO)

(SECY Suspense: 1/22/93)

Attachment:  
As stated

cc: The Chairman  
Commissioner Rogers  
Commissioner Curtiss  
Commissioner Remick  
Commissioner de Planque  
OGC  
OIG  
Office Directors, Regions, ACRS, ACNW (via E-Mail)  
OP, SDBU/CR, ASLBP (via FAX)

SECY NOTE: THIS SRM, SECY-92-380, AND THE VOTE SHEETS OF ALL COMMISSIONERS WILL BE MADE PUBLICLY AVAILABLE 10 WORKING DAYS FROM THE DATE OF THIS SRM

9301110274 921217  
PDR 10CFR  
PT9.7 PDR

080070

DOJ

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, and 72

RIN 3150-AE22

Procedures and Criteria for On-Site Storage of  
Low-Level Radioactive Waste

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission proposes to amend its regulations for reactor, material, fuel cycle, and independent spent fuel storage licensees. The proposed rule would establish a regulatory framework containing the procedures and criteria that would apply to on-site storage of low-level radioactive waste (LLW), beyond January 1, 1996. The Commission has determined, under the authority of the Atomic Energy Act of 1954, as amended, that these changes are appropriate because of potential health and safety concerns associated with the increased reliance upon on-site storage of LLW. The proposed rule is intended to support the goals that have been established by the Low-Level Radioactive Waste Policy Amendments Act of 1985 (Act) and is consistent with the June 19, 1992, United States Supreme Court (Supreme Court) decision, in New York v. United States. Comments are requested on this proposed rule and on strategies and options that the Commission might pursue, in addition to this proposed rulemaking, that would encourage State and compacts to move forward with  
DATE: Comment period expires (60 days after publication).

Comments received after that date will be considered if it is

development of LLW facilities.

Because new LLW disposal facilities are not expected to be operational by January 1, 1993, and the compact commissions that control the existing LLW disposal sites are expected to either close or set conditions on receiving LLW from outside their regional compacts on January 1, 1993, 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 Act indicated that the State planned on interim storage by waste generators from 1993 through 1996. However, many States do expect to have access to the Barnwell LLW disposal facility from January 1, 1993 through June 30, 1994.

Early in 1990, the Commission directed the NRC staff to provide the Commission with information on the issues concerning the waste@title-transfer and possession provisions set forth in the Act, so that the Commission might determine what role, if any, the NRC should play with regard to these provisions. The Commission was also interested in the adequacy of its existing regulatory framework for implementing the title-transfer provision. On September 12, 1990, the NRC staff sent the Commission an analysis of the issues associated with the waste title-transfer and possession provisions of the Act (SECY-90-318). Major issues related to these provisions included States taking possession of commercial LLW after 1993 or 1996, and

be NRC's responsibility to provide for emergency access to operating LLW disposal facilities for the LLW it prohibits from on-site storage.

Response. The NRC is not pursuing a "no on-site storage" option. The NRC recognizes that some generators will have to store LLW on-site. The NRC seeks to minimize the amount of LLW placed in storage, by requiring generators to exhaust all other reasonable waste management options. The guidance governing implementation of the emergency-access provision, of the Act, contained in Information Notice 91-65, "Emergency Access to Low-Level Radioactive Waste Disposal Facilities," will remain in effect. The NRC does not anticipate any situation where the provisions of this rule, in addition to a lack of access, would create a serious and immediate threat to the public health and safety or common defense and security, thereby requiring emergency access.

Comment. A more immediate concern, directly related to the storage of waste, is the authority of a generator to accept its processed waste after this waste has been sent off-site for treatment.

Response. The NRC has initiated a rulemaking to allow nuclear power reactor licensees to receive back LLW after off-site treatment.

Comment. Any rulemaking on this issue must incorporate maximum flexibility, consistent with the protection of the public health

This needs to be updated to reflect approval of the final rule.



frustrated. Therefore, the amendments contained in this proposed rule would be a matter of compatibility for NRC Agreement States. The additional license conditions for LLW on-site storage, after January 1, 1996, in 10 CFR 30.34, 40.41, and 70.32, are considered to be Division 2 categories of compatibility. Although Agreement States must adopt Division 2 rules in their regulations, the use of language identical to that in NRC rules is not necessary, provided that the underlying principles are the same. The Agreement States may adopt more restrictive requirements.

The Commission is currently considering a re-evaluation of its compatibility policy and may decide to revise its general requirements regarding compatibility for the Agreement States. The Commission's compatibility determination, on this proposed rule, <sup>may</sup> ~~would~~ be re-examined in light of any change to the general policy.

#### Discussion of Proposed Revisions

The proposed rule would establish procedures and criteria, for on-site storage of LLW, that would apply to all categories of LLW generators. 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, in the case where the licensee has access to

5. In §40.41, paragraph (h) is added to read as follows:

§40.41 Terms and conditions of licenses.

\* \* \* \* \*

(h) The following conditions are contained in every license issued under the regulations in this part.

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (h)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraphs (h)(2) of this section, for at least three years, and shall make the

procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (1)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraph (1)(2) of this section, for at least three years, and shall make the documentation available for NRC inspection.

#### PART 72 - LICENSING REQUIREMENTS FOR INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

10. The authority citation for Part 72 is revised to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as

11. In §72.44, paragraph (h) is added to read as follows:

§72.44 License conditions.

\* \* \* \* \*

(h) The following conditions are contained in every license issued under the regulations in this part:

(1) Low-level radioactive waste (LLW) may be stored on-site, provided it is authorized under existing conditions of the license, and storage is consistent with existing authorities and procedures, and all relevant licensing and regulatory requirements applicable to on-site storage. LLW may not be stored on-site by the generator beyond January 1, 1996, except as specified in paragraph (h)(2) of this section.

(2) For on-site storage of LLW beyond January 1, 1996 (other than reasonable short-term storage necessary for decay or for collection or consolidation for shipment off-site, in the case where the licensee has access to an operating LLW disposal facility), the licensee shall document that it has exhausted other reasonable waste management options which would include taking all reasonable steps to contract, either directly or through the State, for disposal of the LLW.

(3) The licensee shall retain all relevant documentation regarding the actions taken pursuant to paragraphs (h)(2) of this section, for at least three years, and shall make the