



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

PDR

May 17, 1985

The Honorable Strom Thurmond
Chairman, Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Thank you for your recent letter dated April 17, 1985 concerning low level radioactive waste Compacts. Enclosed are responses to the additional questions for inclusion in the March 8, 1985 Hearing record.

I trust this information is responsive to your needs. If the Commission can be of further help, please do not hesitate to contact me.

Sincerely,.

Nunzio J. Palladino

Enclosure:
As stated

cc: Sen. Joseph Biden

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PDR COMMS NRCC
CORRESPONDENCE PDR

QUESTION 1. ONE MAJOR ELEMENT OF A TRANSITION PERIOD IS VOLUME LIMITATION. IF A NATIONAL CAP WERE SET, IT WOULD BE NECESSARY FOR A GOVERNMENTAL BODY TO ADMINISTER THE CAP. SHOULD NRC OVERSEE VOLUME ALLOCATIONS UNDER A CAP? WOULD IT BE FEASIBLE TO HAVE EACH STATE OR REGION APPORTION VOLUMES AMONG GENERATORS, SUBJECT TO PASSIVE NRC OVERSIGHT? WHAT PROBLEMS DO YOU FORESEE IN A TEMPORARY GRANT OF THIS NEW REGULATORY AUTHORITY TO THE STATES? HOW MUCH TIME WOULD BE INVOLVED IN DEVELOPING THE NECESSARY REGULATORY FRAMEWORK? WHAT WOULD BE THE COST FOR NRC TRANSITION OVERSIGHT, BOTH ACTIVE AND PASSIVE? SHOULD NOT STATES HAVE PRIMARY AUTHORITY, PERHAPS UNDER NRC AGREEMENT, TO ADMINISTER AND REGULATE DISPOSAL OF THESE WASTES GENERATED WITHIN THEIR BORDERS?

ANSWER.

WITH REGARD TO LOW-LEVEL RADIOACTIVE WASTE, THE COMMISSION DOES NOT BELIEVE THAT EITHER THE NRC OR NRC AGREEMENT STATE REGULATORY PROGRAMS SHOULD BE INVOLVED IN ALLOCATING WASTE DISPOSAL CAPACITY AMONG COMPETING LICENSEES. THIS IS IN KEEPING WITH THE SIMILAR NRC POSITION ESTABLISHED DURING DEVELOPMENT OF THE NUCLEAR WASTE POLICY ACT. AT THAT TIME THE COMMISSION MAINTAINED THAT THE NRC WAS NOT THE APPROPRIATE AGENCY TO DETERMINE WHEN A UTILITY WAS ELIGIBLE FOR INTERIM STORAGE OF SPENT FUEL AT A FEDERAL STORAGE FACILITY UNDER THE NUCLEAR WASTE POLICY ACT.

THE NRC BELIEVES FEDERAL LAW IS CLEAR THAT PROVIDING FOR LOW-LEVEL RADIOACTIVE WASTE DISPOSAL CAPACITY IS A RESPONSIBILITY OF THE STATE IN WHICH THE GENERATOR OF THE WASTE IS LOCATED. THE NRC CONTINUES TO BELIEVE THAT LOW-LEVEL WASTE SHOULD BE DISPOSED OF AS GENERATED. LOW-LEVEL WASTE STORAGE MAY PROVIDE THE POTENTIAL FOR UNNECESSARY RADIATION EXPOSURE. HOWEVER, RECOGNIZING THE POTENTIALLY SERIOUS SITUATION SHOULD CURRENT DISPOSAL CAPACITY BE CURTAILED, THE NRC INTENDS TO RESPOND TO APPLICATIONS FROM ITS LICENSEES TO TEMPORARILY PROVIDE FOR ALTERNATIVE WASTE MANAGEMENT PRACTICES INCLUDING STORAGE, SHOULD DISPOSAL SITE ACCESS BE RESTRICTED. SHOULD A PARTICULAR LICENSEE NOT BE ABLE TO MANAGE ITS WASTE SAFELY THROUGH A PERIOD OF DISPOSAL SITE RESTRICTIONS, WE WOULD EXPECT THE LICENSEE TO APPEAL TO THE RESPONSIBLE ENTITY--THE STATE--TO PROVIDE FOR INTERIM WASTE STORAGE PENDING DISPOSAL. IN THE EVENT THE STATE IS UNABLE TO PROVIDE FOR EITHER INTERIM STORAGE OR DISPOSAL, AND IF CONTINUED LICENSEE OPERATIONS POSE A SIGNIFICANT HEALTH AND SAFETY PROBLEM, THE NRC WILL HAVE LITTLE OPTION OTHER THAN TO CAUSE THE LICENSEE TO RESTRICT OR CEASE WASTE GENERATION. THE COMMISSION RECOGNIZES SUCH ACTIONS MAY DENY ESSENTIAL SERVICES TO THE RESIDENTS OF THE STATE. HOWEVER, IN DISCHARGING ITS RESPONSIBILITY TO PROTECT PUBLIC HEALTH AND SAFETY, THE REGULATORY OPTIONS AVAILABLE TO THE NRC ARE LIMITED.

QUESTION 2. WHAT STEPS OR EVENTS, IF ANY, IN THE LICENSING OF A LOW-LEVEL WASTE DISPOSAL FACILITY MIGHT ALLOW FOR EXPEDITED, OR FAST-TRACKING, METHODS IN ORDER THAT NEW SITES MAY BE DEVELOPED MORE QUICKLY WITHOUT AFFECTING HEALTH OR SAFETY CONCERN?

ANSWER.

THE NRC STAFF BELIEVES A NUMBER OF STEPS MAY BE TAKEN BY DISPOSAL SITE DEVELOPERS TO EXPEDITE TIMELY DEVELOPMENT OF NEW LOW-LEVEL WASTE DISPOSAL FACILITIES. THE STEPS OUTLINED BELOW WOULD PRIMARILY OCCUR BEFORE SUBMITTAL OF A LICENSE APPLICATION.

- O WORK CLOSELY WITH APPROPRIATE STATE AND LOCAL OFFICIALS AND OTHER INTERESTED PARTIES TO IDENTIFY AND RESOLVE CONTROVERSIAL MATTERS (E.G., SITING AND LAND USE CONCERNS, TRANSPORTATION ROUTES, IMPACT ON LOCAL SERVICES) ASSOCIATED WITH POTENTIAL DISPOSAL SITE DEVELOPMENT. RESOLUTION OF MAJOR CONCERNS PRIOR TO THE LICENSING PHASE MAY REDUCE CONTINUING CONTROVERSY AND PROTRACTED LITIGATION IN THE LICENSING PHASE, AND ALSO HELP FOCUS THE LICENSING PROCEEDINGS ON TECHNICAL HEALTH AND SAFETY MATTERS.
- O IDENTIFY SEVERAL CANDIDATE DISPOSAL SITES EARLY ON, AND UNDERTAKE LIMITED SITE CHARACTERIZATION WORK AT SEVERAL SITES

SIMULTANEOUSLY. THIS SHOULD PROVIDE A STRONGER BASIS FOR SELECTING A PREFERRED SITE FOR LICENSING PURPOSES THAN A PROCESS BASED ON SITE-SPECIFIC WORK AT ONLY ONE LOCATION. AVAILABILITY OF DETAILED INFORMATION ON SEVERAL SITES WOULD ALSO REDUCE DELAYS IN THE EVENT CHARACTERIZATION RESULTS EXCLUDED A SINGLE CANDIDATE SITE FROM FURTHER CONSIDERATION.

- O IDENTIFY ANY TECHNICAL OR REGULATORY UNCERTAINTIES AFFECTING LICENSING AND SEEK PRE-LICENSING GUIDANCE FROM THE APPROPRIATE REGULATORY ENTITY. THIS WOULD PROVIDE AN OPPORTUNITY FOR EARLY CONSIDERATION AND RESOLUTION OF POTENTIAL LICENSING ISSUES; AND FOR REGULATORY STAFF TO DEVELOP TECHNICAL POSITIONS ON QUESTIONS WHICH MAY NOT HAVE EMERGED PREVIOUSLY. THIS STEP WOULD BE PARTICULARLY APPROPRIATE FOR DEVELOPERS SEEKING TO DEVELOP AN ALTERNATIVE TO SHALLOW LAND BURIAL.
- O DEVELOP A THOROUGHLY DOCUMENTED, HIGH QUALITY LICENSE APPLICATION BACKED BY APPROPRIATE TECHNICAL STUDIES. THIS WILL HELP ENSURE THAT LICENSING PROCEEDINGS ARE NOT DELAYED BY A LACK OF INFORMATION OR INCOMPLETE ANALYSIS BY THE APPLICANT.

THE NRC STAFF ESTIMATES THAT THE AVERAGE LOW-LEVEL WASTE DISPOSAL SITE LICENSE APPLICATION WILL REQUIRE TWO YEARS TO REVIEW. THE ACTUAL TIME MAY BE SHORTER OR LONGER DEPENDING ON THE TECHNICAL

QUESTIONS RAISED, AND THE DEGREE OF CONTROVERSY ATTENDING FACILITY SITING. FOR FACILITIES LICENSED BY NRC, OPPORTUNITIES FOR PUBLIC COMMENT AND FORMAL HEARINGS ARE PROVIDED BY LAW. REQUIREMENTS OF THE FEDERAL ADMINISTRATIVE PROCEDURE ACT WOULD APPLY. WE DO NOT BELIEVE IT WOULD BE POSSIBLE TO SIGNIFICANTLY SHORTEN THE REVIEW PERIOD WITHOUT AFFECTING HEALTH AND SAFETY CONCERNS. FOR THIS REASON, WE HAVE STRESSED THE IMPORTANCE OF PRE-LICENSING ACTIONS BY SITE DEVELOPERS.

FOR NRC AGREEMENT STATES, STATE LAW WOULD DETERMINE PROCEDURAL REQUIREMENTS FOR LICENSE REVIEW. THE PERIOD NOTED ABOVE MAY VARY DEPENDING ON STATE LAWS AND RESOURCE AVAILABILITY.

QUESTION 3. WITH REGARD TO MANDATORY UTILITY ON-SITE STORAGE UNDER CURRENT TECHNOLOGY, WHAT IS A REASONABLE TIME FOR DEVELOPMENT AND CONSTRUCTION OF ON-SITE FACILITIES?

ANSWER.

IN A RECENT TELEPHONE SURVEY BY NRC STAFF, UTILITIES ESTIMATED THAT IT WOULD GENERALLY TAKE EIGHTEEN MONTHS TO TWO YEARS TO DEVELOP AND CONSTRUCT ON-SITE LOW-LEVEL WASTE STORAGE FACILITIES. THIS PERIOD IS BASED ON ESTABLISHMENT OF FACILITIES FOR UP TO FIVE YEARS WASTE GENERATION, AS ALLOWED FOR UNDER EXISTING LICENSING POLICY. STATE OR REGIONAL DISPOSAL FACILITIES, RATHER THAN MANDATORY UTILITY STORAGE, ARE CONSIDERED PREFERABLE FROM A HEALTH AND SAFETY STANDPOINT.

QUESTION 4. CURRENTLY, COMPACT REGIONS OCCUPY A HYBRID STATUS BETWEEN STATE AND FEDERAL GOVERNMENT. PLEASE COMMENT ON THE DESIRABILITY AND POTENTIAL PROBLEMS ASSOCIATED WITH THE CREATION OF NRC AGREEMENT COMPACT REGIONS, AS WELL AS THE SUBJECTING OF COMPACT REGIONS GENERALLY TO NRC OVERSIGHT.

ANSWER.

THE NRC STAFF BELIEVES THAT COMPACT COMMISSIONS OR BOARDS SHOULD NOT BE GRANTED ANY HEALTH, SAFETY OR ENVIRONMENTAL REGULATORY AUTHORITY BY VIRTUE OF ENACTMENT OF COMPACT LEGISLATION BY INDIVIDUAL STATES, BY COMPACT CONSENT LANGUAGE ENACTED BY CONGRESS, OR BY AMENDMENTS TO THE LOW-LEVEL RADIOACTIVE WASTE POLICY ACT. FORMAL ESTABLISHMENT OF AGREEMENT COMPACT REGIONS WOULD, IN OUR VIEW, INAPPROPRIATELY REMOVE THE NECESSARY DISTINCTION BETWEEN DEVELOPMENTAL AND REGULATORY RESPONSIBILITIES.

THE ESTABLISHMENT OF A VOLUME LIMITATION CAP, AS POSTULATED IN QUESTION 1, MAY RESULT IN LICENSEE-SPECIFIC ISSUES WHICH REQUIRE CONSIDERATION OF IMPACTS ON HEALTH, SAFETY OR THE ENVIRONMENT. CONSIDERATION OF THESE HEALTH, SAFETY, AND ENVIRONMENTAL ISSUES SHOULD BE HANDLED BY THE NUCLEAR REGULATORY COMMISSION OR THE AGREEMENT STATES UNDER THE CURRENTLY WELL ESTABLISHED REGULATORY FRAMEWORK. WE DO NOT FAVOR THE CREATION OF NEW SCHEMES WHICH WOULD DISRUPT THE ESTABLISHED REGULATORY FRAMEWORK.

WE QUESTION THE APPROPRIATENESS OF ASSIGNING AN INTERSTATE COMPACT COMMISSION RESPONSIBILITY FOR ACTIONS WHICH MAY RESULT IN HEALTH, SAFETY OR ENVIRONMENTAL CONCERNS AT LICENSEE FACILITIES IN MEMBER STATES. PROBLEMS WOULD LIKELY ARISE IF A MEMBER STATE EXERCISED ITS PREROGATIVE TO WITHDRAW FROM THE COMPACT, AS PROVIDED FOR IN THE LANGUAGE OF ALL COMPACTS NOW UNDER CONSIDERATION. WE BELIEVE THE STRONG INTEREST A HOST STATE WILL HAVE IN SITE DEVELOPMENT AND OPERATION MAKE THE ACCEPTABILITY OF ANY COMPACT COMMISSION REGULATORY ACTIONS AFFECTING SUCH ACTIVITIES HIGHLY QUESTIONABLE.