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Thank you.

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(2) the last sentence of the 3d paragraph also could better be dropped. it's ambiguous and might be misread to say there are significant concerns with llw disposal at ward valley that aren't addressed by the county's proposal.

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PDR WASTE  
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*Looked good.*

Mr. Ernest Goitein  
167 Almondal Avenue  
Atherton, CA 94027

Dear Mr. Goitein:

*The U.S. Nuclear Regulatory Commission*

I am responding to your letter of May 2, 1997, to Chairman Jackson, of NRC concerning the San Bernardino County Board of Supervisors' proposal for amending the Low-Level Radioactive Waste Policy Amendments Act of 1985. As you noted, NRC commented on the proposal in a letter to U.S. Congressman Jerry Lewis on March 27, 1997. In your letter, you state that, based on statewide polling, most people in California recognize that a shallow land disposal facility will leak. You also state that you believe the term "low-level waste" is misleading because long-lived radionuclides may be present. As a result, you ask that we reconsider the San Bernardino County Board of Supervisors' proposal.

*/s'  
/u.s.  
/s'*

We share your concerns about the need for safe disposal of low-level radioactive waste (LLW), and public confidence in LLW disposal. However, as we noted, the proposal is based on some misunderstandings of both the law and the facts related to ~~low-level radioactive waste disposal~~ <sup>LLW</sup>. In our letter to Congressman Lewis, we ~~provided~~ <sup>noted</sup> a number of significant, specific concerns <sup>requiring</sup> with the proposal that could adversely affect protection of public health and safety. These include the proposal's failure to address <sup>the</sup> orphan wastes that it would create, the fact that it is neither scientific nor risk-based, and its lack of a justification in terms of health benefits to be gained <sup>vs</sup> ~~costs~~ <sup>versus</sup>.

Your letter does not address any of these specific concerns with the proposal. Our primary mission is the protection of public health and safety from the effects of radiation, and for the reasons identified in our letter, we have no reason to believe that public health and safety would not be protected adequately by disposal of LLW at the Ward Valley site. On the other hand, there are significant unaddressed concerns with the proposal from the County.

The Commission appreciates your interest in the development of new LLW disposal capacity in the United States. ~~●~~ I trust that this reply responds to your concerns and clarifies our position.

Sincerely,

Carl J. Paperiello, Director



UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555-0001

March 27, 1997

The Honorable Jerry Lewis  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Lewis:

Thank you for giving the Nuclear Regulatory Commission the opportunity to comment on the recommendations to amend the Low-Level Radioactive Waste Policy Act (LLRWPA) of San Bernardino County Supervisor, Jon Mikels. Our comments relate to the version of the recommendations (referred to below as "the proposal") faxed to the NRC by Jeff Shockey on February 4, 1997.

The proposal appears to be based on some misunderstandings of both the law and the facts related to low-level radioactive waste (LLW) and its disposal. In addition to requiring changes in the LLRWPA, the proposal would require extensive changes to NRC and State regulations and to LLW compacts. State representatives have advised us that extensive changes to the legislative or regulatory framework regarding LLW disposal would cause delays in their efforts to develop new disposal facilities.

A brief review of the history of the LLRWPA should help to put the proposal in perspective. Originally enacted in 1980, the Act was the result of nationwide concern about disposal of LLW. The National Governors' Association, which had studied the issue, had concluded that each state should accept primary responsibility for safe disposal of LLW generated within its borders. The Association also recommended that the best way to achieve the goals of the Act was for States to pursue a regional approach to the disposal problem. Congress adopted the Association's recommendations. However, in a few years, it became clear that the 1980 Act had not succeeded in resolving the disposal problem. The Act was amended in 1985 by the Low-level Radioactive Waste Policy Amendments Act, which replaced virtually the entire substance of the LLRWPA with more detailed provisions. The amended Act left the States free to determine what type of disposal facilities to build. There continues to be widespread support for the Act.

While the NRC and the Department of Energy were given some roles to play, the central responsibility for implementation of the LLRWPA's goals was given to the States. Significant incentives were provided for States to carry out this responsibility through regional LLW compacts. Among other things, compacts formed pursuant to the Act are permitted to exclude LLW from non-party States. The terms of the compacts are arrived at through negotiation between the party States, and the compacts must be approved by the respective legislatures of the party States. After State enactment, the compacts are ratified by the Congress. This entire process easily can take several years. For this

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reason, efforts to make substantive changes in the compacts, to comport with the proposal's recommended legal and policy changes, could take years to complete.

Turning to the substantive changes recommended by the proposal, at their heart there appears to be a lack of understanding of the considerations that are relevant to risk. The proposal focuses on a system of classification based on "decay life," which it defines in terms of "half lives." This approach is neither scientific nor risk-based, and it does not comport with accepted international views. Risk is a function of radiation dose, and the determination of risk depends on a variety of factors, including the type of radiation, the concentration of radionuclides in the medium in which they are present, the likelihood that barriers containing the radionuclides will be fully effective to contain the radionuclides, and the likelihood of exposure if the radiation is not fully contained. (The half-life of a particular radionuclide also may be a factor, but it is not controlling.) In fact, the type of management suggested for the waste by the proposal (visual and other inspection and repackaging) could be risky for the workers involved.

There is another significant problem with the proposal. In redefining LLW, it makes no provision for radionuclides with a "decay life" of more than 100 years, thus creating orphan wastes. The proposal does not state how this new category of waste would be managed or who would be responsible for its management. Not only would this require statutory changes, but it also would require extensive changes to NRC and Agreement State LLW disposal regulations and guidance. The uncertainty this would create for some time would be likely to destabilize States' efforts to develop new disposal facilities.

It appears from the statements of background information and policy objectives accompanying the suggested amendments that the primary purpose of the proposal is to prevent the development of a LLW disposal site at Ward Valley. In that connection, it is important to point out that California is an Agreement State (that is, it has entered into an agreement with the NRC pursuant to section 274 of the Atomic Energy Act) and is responsible for licensing the proposed Ward Valley LLW disposal facility. California has adopted regulations that are compatible with NRC's regulations for land disposal of radioactive waste (10 C.F.R. Part 61), and the NRC has confidence in the State's Agreement State Program. While we have not made detailed findings on all the technical issues, we have no reason to believe that public health and safety would not be protected adequately by disposal of LLW at the Ward Valley site.

California is also a member of a LLW compact -- the Southwestern Compact -- and California has been designated as the host State of the compact. This means that the State has undertaken to provide LLW disposal facilities for itself and other compact members. With respect to the appropriateness of shallow land disposal at the Ward Valley site, this is a decision that has been arrived at by the State of California after review at all levels of State government and considerable litigation. What problems may remain to enable California to effectuate this undertaking are not the result of any problem inherent in the LLRWPA.

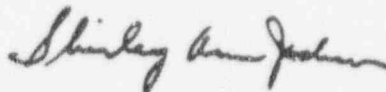
10 C.F.R. Part 61 is consistent with generally accepted international criteria for LLW disposal. It is true that there are other countries that have or are building engineered facilities, but this does not mean that shallow land disposal of LLW is prohibited by international standards. The determination of what is an appropriate facility depends to a large extent on site-specific environmental and other factors. Areas such as Ward Valley are vastly different from those surrounding many engineered facilities developed in other countries. In particular, there are significant environmental differences in terms of amount of rainfall and humidity, depth of water table, density of population, and agricultural usage in the surroundings.

Under the Atomic Energy Act, the NRC is the licensing body in States that have not chosen to become Agreement States. The NRC also conducts periodic formal reviews of Agreement State programs to determine their adequacy to protect the public health and safety. The Atomic Energy Act recognizes the need for compatibility between NRC and Agreement State regulations, and the NRC has established a policy to define the necessary degree of compatibility. San Bernardino County Supervisor, Jon Mikels' proposal however, would allow local governments to regulate the packaging, treatment, and storage of LLW and to set limits for the amount of waste that would be permitted in an "engineered storage facility." Clearly, such a system would need to be examined closely with a view toward avoiding duplication and conflicts in the regulation of LLW disposal.

Finally, we would like to point out that the proposal lacks any supporting estimates of health benefits or cost increases that would result from the redefinition of LLW and the restriction to engineered storage-to-decay LLW disposal. Given the magnitude of the policy changes proposed, it would seem important to provide some justification in terms of estimated health benefits to be gained and at what cost.

Again, thank you for the opportunity to review this proposal.

Sincerely,



Shirley Ann Jackson



Mr. Ernest Goitein  
167 Almedra Avenue  
Atherton, CA 94027

Dear Mr. Goitein:

I am responding to your letter of May 2, 1997, to Chairman Jackson, of the U.S. Nuclear Regulatory Commission, concerning our views on a San Bernardino County Board of Supervisors' proposal for amending the Low-Level Radioactive Waste Policy Amendments Act of 1985. As you noted, NRC commented on the proposal in a letter to U.S. Congressman Jerry Lewis on March 27, 1997.

We share your concerns about the need for safe disposal of low-level radioactive waste (LLW), and public confidence in LLW disposal. However, as we noted, the proposal is based on some misunderstandings of both the law and the facts related to LLW disposal. In our letter to Congressman Lewis, we noted a number of significant, specific concerns, regarding the proposal, that could adversely affect protection of public health and safety. These include the proposal's failure to address the orphan wastes that it would create, the fact that it is neither scientific nor risk-based, and its lack of a justification in terms of health benefits to be gained versus costs.

Your letter does not address any of these specific concerns with the proposal. Our primary mission is the protection of public health and safety from the effects of radiation, and for the reasons identified in our letter, we have no reason to believe that public health and safety would not be protected adequately at the Ward Valley site.

The Commission appreciates your interest in the development of new LLW disposal capacity in the United States. I trust that this reply responds to your concerns and clarifies our position.

Sincerely,

Carl J. Paperiello, Director  
Office of Nuclear Material Safety  
and Safeguards

\* see previous concurrence

CP/PROOFED/MAY 16, 1997

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DATE	5/14/97		5/14/97		5/14/97		5/14/97		5/13/97		5/15/97	
OFC	NMSS		DEDO		EDO		OC					
NAME	CPaperiello		HThompson		JCallan		SAJackson					
DATE	5/16		5/16/97		/ /		/ /					

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