

THE LOW-LEVEL RADIOACTIVE WASTE POLICY ACT NEEDS AMENDMENT

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Presentation to the Annual Meeting of the Organization of Agreement States
October 6, 2005
San Diego, California

HIGHLIGHTS OF CAL RAD FORUM'S WRITTEN TESTIMONY TO THE SENATE ENERGY AND NATURAL RESOURCES COMMITTEE SEPTEMBER 30, 2004¹

The National Picture:

Congress should revisit the Low-Level Radioactive Waste Policy Act and fashion a solution that assures all users of radioactive materials in the U.S. access to safe disposal facilities.

Disposal capacity for low-level radioactive waste is limited and dwindling. On the nation's present course, by July 1, 2008, when access to the Barnwell, SC disposal facility is restricted to the Atlantic Compact, public and private organizations and most government agencies that use radioactive materials in 34-36 states, the District of Columbia, and Puerto Rico will have no place to dispose of their more radioactive categories of low-level waste. Also, at that time, one facility will have monopoly control over disposal of the most voluminous (and least radioactive) class of low-level waste from these states.

In the twenty-five years since enactment of the Policy Act, no new facilities, consistent with the requirements of the Act, i.e., fully-licensed to dispose of waste classes A, B, and C, have been developed.

With the exception of Texas, all state programs for development of new disposal facilities in the U.S. have stopped. States have not demonstrated the political will necessary to implement the Policy Act and develop new disposal facilities.

The Policy Act has a legacy of litigation. None of these lawsuits is likely to result in development of a new disposal facility.

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http://www.calradforum.org/A_NATIONAL_SOLUTION_FOR_A_NATIONAL_PROBLEM_Rev_1.html

Proposed Solution: A Greater Role for the Federal Government:

Near Term: Access to DOE disposal facilities.

Access to DOE facilities, at least for the 36 states not in compacts with existing regional disposal facilities (Northwest, Rocky Mountain, and Atlantic Compacts) might find support in the conclusions of a DOE Inspector General's report that the Department's disposal facilities are under-utilized.²

Long Term: Congressional authorization for development of new disposal facilities.

A long-term national solution might include Congressional authorization for the development and operation of one or two LLRW disposal facilities, possibly by the Department of Energy or commercial entities, on federal land, under direct regulation of the U.S. Nuclear Regulatory Commission pursuant to the NRC's regulations at Title 10 Part 61 of the Code of Federal Regulations.

DOE's Off-Site Source Recovery Program (OSRP): an Example of an Important Federal Role:

The federal government, through the Department of Energy's Off-Site Source Recovery Program at the Los Alamos National Laboratory, has taken on the responsibility to collect and safeguard "commercial" sealed radioactive sources that would otherwise be orphaned. Significantly, the Government Accountability Office (GAO), in a recent report, has suggested that these sources might be disposed of at DOE facilities.³

"We are recommending that DOE and NRC collaborate in evaluating and reporting on the potential cost implications of expanding DOE's recovery and disposal of non-GTCC waste from sealed radiological sources, options to recoup DOE costs from licensees that may have no disposal option, and the feasibility of disposing of this waste at DOE sites. (Emphasis added.)

Comments by the U.S. Nuclear Regulatory Commission on GAO's Report of June 2004

² "Utilization of the Department's Low-Level Waste Disposal Facilities," DOE/IG-05-5, May 25, 2001.

³ "NUCLEAR SECURITY. DOE Needs Better Information to Guide Its Expanded Recovery of Sealed Radiological Sources," GAO-05-967, September 2005.

In June 2004, the U.S. Government Accountability Office issued a report on the low-level radioactive waste disposal situation at the request of the Senate Committee on Energy and Natural Resources.⁴ Included in the report are the comments of the U.S. Nuclear Regulatory Commission. An excerpt of these comments follows:

“The current report is a sequel to GAO’s 1999 report, “Low-Level Radioactive Wastes: States Are Not Developing Disposal Facilities” (GAO/RCED-99-238). That report concluded that none of the States’ or compacts’ efforts to develop new disposal capacity had been successful and the state efforts to do so had “essentially stopped.” This earlier report also examined alternatives to the current system for development of new disposal capacity in the U.S., but did not recommend any of them. Appendix II of the current report updates these alternatives. We believe that it is now time for GAO to explore these alternatives further because the future availability of disposal capacity and the costs of disposal under the current system remain highly uncertain and LLRW generators need predictability and stability in the national disposal system. We acknowledge that the potential approval for Envirocare to accept Class B and C wastes and licensing of a LLRW disposal facility in Texas could significantly improve the current LLRW disposal system in the U.S. At the same time, the nearly 20 years of experience under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) has demonstrated the difficulties in siting and licensing a LLRW facility. Not one new facility has been developed in this time under the LLRWPA. Therefore, we believe it is in the national interest to begin exploring the alternatives identified in Appendix II that would potentially provide a better legal and policy framework for new disposal facilities for commercial generators of LLRW.” (Emphasis added.)

Earlier this year, the State of Utah, by statute, determined that it will not accept LLW classes B and C for disposal.

ADDITIONAL CONSIDERATIONS

⁴ “Low-Level Radioactive Waste: Disposal Availability Adequate in the Short Term, but Oversight Needed to Identify Any Future Shortfalls,” GAO-04-604, June 9, 2004.

Implications for State Regulators: Regulatory Burdens. Storage Is Not A Long-Term Alternative To Permanent Disposal.

Defenders of the Policy Act and the *status quo* argue that low-level wastes can be safely stored. While this is true, permanent disposal of waste is far preferable and is the policy of the NRC. Furthermore, when licensed facilities where radioactive materials have been used must be decommissioned and the license terminated, on-site storage is no longer an option. The waste must be disposed of. This is a frequent occurrence in the industrial sector when growing companies wish to leave old facilities and move to larger, newer facilities.

Significant expansion of waste storage due to lack of disposal will add economic and regulatory burdens, especially for regulators in Agreement States. The staff of the U.S. Nuclear Regulatory Commission has anticipated this problem. In SECY-05-0024 dated January 31, 2005, the NRC's Executive Director for Operations notes:

“Currently, Barnwell remains open to out-of-compact waste, but is scheduled to close to such waste in 2008. As discussed above, a recent GAO report has determined that uncertainties remain about future access to disposal facilities. In its review of LLW storage guidance, staff has not currently identified any safety concerns that would necessitate immediate revision of the storage guidance but has determined that, in light of the uncertainty of disposal capacity and the consequent likelihood of extended storage of waste, it should consider the need to revise the guidance. The staff review will be conducted so that, if the staff concludes that guidance need to be developed or revised, the work will be completed in sufficient time to ensure that the closure of Barnwell will not result in any safety concerns for storage. Extended storage, larger volumes of stored waste, and storage by licensees unaccustomed to storing may have safety, security, environmental, regulatory, and financial implications. To date, staff has identified nine guidance documents, specifically related to LLW storage, to consider for updating and consolidation. Also, given the increased interest in LLW disposal (e.g., a license application for a disposal site in Texas), the staff will consider the need to update and consolidate all guidance for disposal of LLW. Currently no resources are budgeted in fiscal year (FY) 2005 for this specific activity. If development or revision of guidance is needed, the Planning, Budgeting, and Performance Management process will be used to identify the relative priority of this work with other emerging needs.”

“Flexibility” in the Policy Act is Sometimes Overstated as A Reason for Altering the Current Disposal Framework.

Defenders of the *status quo* claim the Act is “flexible” and can adapt to changing circumstances. They cite the agreement between the Northwest and Rocky Mountain Compacts that allows waste generators in the Rocky Mountain States to use the Northwest’s regional disposal facility at Richland, WA. They also point to formation of the Atlantic Compact (South Carolina, Connecticut, and New Jersey). However, the Northwest-Rocky Mountain Compact agreement simply allowed the Rocky Mountain Compact to close its regional facility at Beatty, NV. It did not provide new, assured disposal access to states that lacked such access prior to the agreement. Formation of the Atlantic Compact was the culmination of events that reduced the number of states with assured access to a disposal facility. The Atlantic Compact was formed following failure of North Carolina to develop a new facility for the Southeast Compact, subsequent expulsion of North Carolina from the Southeast Compact, and withdrawal of South Carolina from the Compact. Prior to these events, eight states of the Southeast Compact had assured access to the Barnwell, SC disposal facility; now, only the three states of the Atlantic Compact have such assured access.

Additional Important Federal Initiatives to Improve the LLRW Disposal Situation.

In addition to the Department of Energy’s Off-Site Source Recovery Program (OSRP) mentioned earlier, two other federal initiatives are worthy of mention: 1) The Environmental Protection Agency’s Advance Notice of Proposed Rulemaking (ANPR) on low-activity waste which would increase disposal options for slightly contaminated low-level waste, and 2) the DOE’s Advance Notice of Intent to prepare an Environmental Impact Statement for disposal of Greater-than-Class C waste.

SUMMARY

The nation’s framework for low-level waste disposal is inadequate and, without action by Congress, will become much worse. Beneficial uses of radioactive materials by industries, research and medical institutions, utilities, and agencies of state and federal governments are jeopardized by the current and projected future inadequate disposal infrastructure. Lack of access to disposal capacity could stop or impede some research, medical,

governmental, and industrial uses of radioactive materials and have a detrimental impact on the quality of life and health.

A number of organizations, through testimony and other communications to the Senate Energy and Natural Resources Committee and by adoption of position statements, have called on Congress to revisit the Low-Level Waste Policy Act and fashion a solution that will provide assured access to safe disposal facilities for low-level radioactive waste. These organizations include the U.S. Nuclear Regulatory Commission, the Health Physics Society, the American Nuclear Society, Southern California Edison Company, the Council on Radionuclides and Radiopharmaceuticals (CORAR), and Cal Rad Forum.

Cal Rad respectfully requests the Organization of Agreement States to join these groups in seeking a solution, outside the existing framework, to our critical LLRW disposal infrastructure problem.