

except to clarify or explain provisions of the proposed rule.

Authority: 21 U.S.C. 151-159, 7 CFR 2.17, 2.51, and 371.2(d).

Lonnie J. King,

Administrator, Animal and Plant Health Inspection Service.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 61

RIN 3150-AE88

Land Ownership Requirements for Low-Level Waste Sites

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Nuclear Regulatory Commission (NRC or Commission) is withdrawing an advance notice of proposed rulemaking that presented a possible change to the NRC Federal or State land ownership requirements for low-level waste (LLW) facility sites. The Commission has decided that a rule change to allow private ownership of a LLW site is not warranted or needed. The basis for this decision is that States and compacts have generally indicated that they do not need, nor would they allow, private ownership, and that this rule change could be potentially disruptive to the current LLW program.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: On August 3, 1994 (59 FR 39485), the Commission published an advance notice of proposed rulemaking (ANPRM) to consider amending its regulations to allow private ownership of LLW facility sites as an alternative to the current requirement for Federal or State ownership. In the ANPRM, the Commission requested information on specific questions that dealt with (1) the potential use of this alternative, (2) impacts to public health and safety or the environment, and (3) liability considerations.

The 60-day comment period was extended another 60 days at the request of the Nuclear Information and Resource Service (October 20, 1994; 59 FR 52941). The comment period expired on December 2, 1994. The Commission

received 49 comment letters: 19 commenters were from States, compacts, or their representatives; 12 were from public organizations; 11 were from commercial/industrial organizations or their representative; 4 were from individuals; and 1 each were from a Federal agency, a national laboratory, and a professional organization. Most of the commenters took a definitive position regarding whether to initiate a proposed rule. For the most part the commenters, at a ratio of about 4 to 1, were against developing a generic rule. The Commission prepared a detailed summary of the comments received. Copies of the summary are available for inspection or copying for a fee from the NRC Public Document Room at 2120 L Street NW. (Lower Level), Washington DC; the PDR's mailing address is US NRC, Mail Stop LL-6, Washington, DC 20555-0001; telephone (202)634-3273; fax (202)634-3343.

As noted in the ANPRM, the purpose for making a generic rule change would be to facilitate the objectives of the Low-Level Radioactive Waste Policy Act of 1980, as amended. Therefore, as noted in the ANPRM, the NRC was particularly interested in determining whether Agreement States or compacts would use a provision allowing private ownership of the land for a LLW facility. The Commission believes that if there did not seem to be a significant interest or need for such a provision, addressing private ownership issues through appropriate exercise of exemption authority would be sufficient.

The Agreement State and compact commenters generally indicated that they would not allow private land ownership, and in many cases, State ownership of the land is required by State law or regulation. Of the 19 comments from States, compacts, or their representatives, only Nebraska indicated a desire to actively consider changes permitting private ownership. Nebraska and the Cortland County, New York, Low-Level Radioactive Waste Office stated that there is not an adequate basis for requiring Federal or State land ownership, which therefore would support private ownership. The Commission believes there is adequate statutory authority for the NRC to require Federal or State land ownership. Moreover, because Nebraska is the only additional State considering changes permitting private ownership, the Commission believes assisting Nebraska on a case-specific basis, if requested and appropriate, is preferable to developing a generic rule change.

Many commenters, including States and compacts, also believe that this type of change to 10 CFR part 61 is not only unnecessary but would be a significant disruption to the current siting and licensing process. As one commenter noted, this would have a negative impact on public health and safety because it would affect the timely development of new LLW disposal facilities needed to reduce on-site storage at thousands of licensee sites throughout the country. The Commission believes that these comments have merit. The Commission believes that the potential negative impact of disrupting the current process far outweighs any potential benefits that might be derived from making a generic rule change at this time.

This change could also generate significant public misunderstanding and unwarranted public concern about the potential rollback of other LLW disposal requirements. The Idaho National Engineering Laboratory's National Low-Level Waste Management Program summarized this issue, stating:

For over three decades the public has been led to believe that all LLW disposal sites would necessarily be owned and controlled by either a Federal or State government. This, we believe, has been an important factor in convincing many proponent groups and State and local LLW advisory groups that LLW can and will be disposed of in a safe manner. To now try and convince these groups that Federal or State ownership of LLW disposal sites is not required, may be difficult and generate a significant credibility problem.

The Commission has not objected to private ownership of the Envirocare site under Agreement State authority in the State of Utah because of special reasons and provisions applicable to that site. The Commission believes that if any other State desires to use an exemption provision, a case-specific evaluation would be conducted, as was done for the State of Utah. Any evaluation would consider whether the underlying purpose of governmental ownership, assuring the existence of a responsible entity for long-term care and monitoring of the site, can be achieved.

For the reasons discussed, the Commission is withdrawing the ANPRM.

Dated at Rockville, Maryland this 12th day of July, 1995.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

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