



OFFICE OF THE GOVERNOR
AGENCY FOR NUCLEAR PROJECTS

1761 E. College Parkway, Suite 118

Carson City, Nevada 89706

Telephone: (775) 687-3744 • Fax: (775) 687-5277

E-mail: nwpo@nuc.state.nv.us

May 14, 2004

Air and Radiation Docket
Environmental Protection Agency
EPA West Room B108, Mailcode: 6102T
1200 Pennsylvania Ave., NW.
Washington, DC 20460
Attention Docket ID No. OAR-2003-0095.

Re: State of Nevada comments on EPA's Federal Register Notice of November 18, 2003, "Approaches to an Integrated Framework for Management and Disposal of Low-Activity Radioactive Waste: Request for Comment"

To whom it may concern:

The State of Nevada is submitting the following comments in response to EPA's November 18, 2003 Advance Notice of Proposed Rulemaking (ANPR) titled, "Approaches to an Integrated Framework for Management and Disposal of Low-Activity Radioactive Waste: Request for Comment."

General Comment

Throughout the Notice, EPA characterizes its purpose in proposing changes to regulations governing the disposal of low-activity radioactive waste and mixed waste as seeking to "provide a more coherent framework to manage LARW," find a "simpler but protective approach to the present dual regulatory system," "provide flexibility for safe disposal of LAMW and LARW, and reduce costs and regulatory burden. In the abstract, these all seem to be worthy goals. In practice, however – especially with regard to nuclear activities – it is not a simple matter to distinguish between necessary and unnecessary regulation. It is no accident that radioactive materials have, over the years, received the level of regulatory attention they have. Even with the extensive and overlapping regulatory regime, radioactive waste have caused and continue to cause significant environmental and public health and safety problems. The current push that

seems to be underway within all the federal regulatory agencies to reduce the regulatory burden by removing requirements that might be characterized by some as overly conservative or unnecessarily duplicative may realize certain cost benefits for particular stakeholders in the short term, but could result in much larger industry-wide and nation-wide costs in the event that such regulatory “relief” leads to unintended consequences involving increased radiological release and contamination over the long term.

The challenge here is to be able to distinguish “unnecessary” regulations and regulatory overlap from that which is appropriate and supportive of enhanced safety and public confidence. Overlapping regulations and multi-agency jurisdiction are effective strategies for enhancing safety and promoting public trust and confidence in activities that are inherently risky or perceived so by the public. EPA would do well to remember that regulations were imposed for valid reasons, and the fact that there are overly conservative regimes and overlapping areas of regulation does help ensure an added layer of safety and fosters enhanced public confidence.

Generally, Nevada is supportive of simplification of rules that are duplicative and unnecessarily burdensome, particularly if they are causing undue difficulties for sources to safely and properly dispose of their hazardous and radioactive wastes. However, the ANPR lacks enough definitive information to evaluate the adequacy of RCRA facilities to properly manage and dispose of “low-activity radioactive waste”. Until further information is available regarding the specific activity of wastes that are being considered and the potential quantity of such wastes to be disposed of, it is not possible to determine whether this special rule-making is necessary or prudent. Nevada expects that there will be a future opportunity to address the overall proposal when such information becomes available and specific proposals for changes to RCRA for the management of these wastes are presented. It is presumed that the opportunity for further comment will be provided in the next stage of proposed rulemaking.

Nevada is supportive of the cooperative efforts by EPA and the Nuclear Regulatory Commission (NRC) to identify meaningful traits or numerical thresholds among subcategories of radioactive waste. We would expect that the outcome of such an evaluation would distinguish between those wastes that can be disposed with minimal regard for their radioactive characteristics and those that warrant special handling provisions in order to safely manage the radioactive characteristics. Nevada would consider the results of this study in our determinations of whether a RCRA Class C landfill located in Nevada should be permitted to receive “low-activity” wastes. To that end, Nevada submits that the option to amend or issue RCRA permits to allow for “low-activity” wastes must be left with delegated states.

As presented in the ANPR, RCRA permits and permits issued in accordance with the Atomic Energy Act are established with two very different approaches. Permits issued under RCRA are based on specific engineering standards and criteria while permits issued under AEA are performance based. In order to proceed with an appropriate rulemaking, it will be necessary for EPA to reconcile these different approaches to ensure that the engineering standards under RCRA are adequate to meet the performance

requirements associated with all of the potential characteristics associated with the “low-activity” wastes identified for RCRA disposal.

Specific Comments

Page 65124 – II. How Can the Disposal of LAMW be Simplified? (2nd paragraph):

“In an effort to further reduce the burden of this dual regulatory framework for mixed waste, one option would be to promulgate a standard ... in coordination with NRC allowing the disposal of LAMW in Subtitle C (hazardous waste) RCRA landfills.”

Such action could be viewed as circumventing the purpose and intent of the LLRWA in establishing regional facilities for disposal of LLW and mixed LLW. Facilities such as the Beatty hazardous waste landfill in southern Nevada, which prohibits the disposal of LLW, might again find themselves the recipient of LAMW and LARW. This is likely something states like Nevada, which over the years have closed facilities to the disposal of such waste, would strongly oppose.

Page 65125 – II. A. 2. Assess Alternative Disposal Methods (4th bullet):

Solid waste disposal facilities permitted under RCRA Subtitle D – The Notice requests comment on the suitability of Subtitle D facilities for disposal of waste with low concentrations of radionuclides. Nevada cannot support disposal of radioactive wastes of any activity in Class D landfills, as suggested in the ANPR.

Permitting any form of currently regulated LLW, LARW or LAMW to be disposed of in landfills is something that will not be viewed favorably by the public. It would potentially open a Pandora’s box leading to increased public opposition to landfill siting, potential abuses on the part of generators and waste disposers seeking ways around what they perceive as onerous regulations, and putting increased, unnecessary, and unwarranted burdens on State regulators of solid waste facilities. It appears to us that the concept is politically and socially unworkable, technically suspect, and a regulatory nightmare.

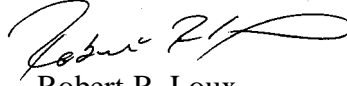
Page 65143 – II. K. 7. Should any rule or guidance apply to only commercial RCRA – C disposal facilities ... ? To privately-owned facilities? To DOE facilities?

Nevada is concerned about possible consequences of any regulatory changes that might permit large volumes of LARW and LAMW to be disposed of at existing DOE LLW disposal facilities. It is unclear how the proposed rulemaking applies to DOE wastes. Extraordinary quantities of “low-level” radioactive wastes are currently being disposed of at the Nevada Test Site in unlined pits that are not adequately monitored. The activity of some of the waste being disposed is higher than some wastes that are considered “high-level” radioactive wastes by the NRC. It is apparent that DOE is not hampered by excessive and duplicative regulations, as perhaps some private interests are. Nevada is

not supportive of any proposals that will further reduce the limitations on the DOE for disposal of radioactive wastes.

Nevada appreciates the opportunity to comment on the Advanced Notice of Proposed Rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a stylized flourish at the end.

Robert R. Loux
Executive Director

RRL/cs

cc Jolaine Johnson, Nevada Division of
Environmental Protection
Stan Marshall, Nevada State Health Division
Radiological Health