

REGULATORY OPTIONS

The options discussed below emerged from the results of the surveys and the group's analysis of issues. The issues are discussed in the attached Rulemaking Plan.

The CRCPD has formed a Committee to develop a Suggested State Regulation for Control of Radiation (SSRCR) on AIFs. The Chairman of the Committee participated on the joint NRC/State Working Group to develop this rulemaking plan. At this time, CRCPD intends to pursue development of a Suggested State Regulation, whether or not NRC proceeds with rulemaking. The CRCPD Committee would consider this Rulemaking Plan produced by the joint NRC/State Working Group. If NRC does not proceed with development of a rule and the CRCPD does proceed, NRC would provide a liaison to the CRCPD Committee and would participate in the peer review of a draft SSRCR under Options 1 and 3 below. If, in the future, NRC considers a rule for AIF licensing necessary, the agency could adopt the CRCPD SSRCR or use it as the basis for an NRC rule but, in any case, NRC would be required to use the normal notice and comment process for proposed and final rules. This would include preparation of a generic environmental impact statement.

1. Maintain the status quo - no action. Take no further rulemaking action on the basis that few of the stakeholders involved expressed enough interest in an AIF to warrant rulemaking and that the issues of LLW management are not acute enough to require rulemaking action. Licensees would continue to reduce volumes of waste and to dispose of waste to the extent possible. Licensees that lose access to disposal would store onsite indefinitely. If the CRCPD proceeds with development of its SSRCR, NRC would provide a liaison to the CRCPD and would participate in peer review of the CRCPD suggested regulation.

Pro: No additional expenditure of resources for rulemaking would be necessary.

Con: No national criteria would exist for design and operation of an AIF. Individual States, such as Ohio, would develop their own criteria, and there would not necessarily be consistency among States.

Con: No criteria nor standards are currently in place to guide an application to NRC or NRC review of an application.

Con: If an applicant unexpectedly indicated intent to apply for an AIF license, NRC and Agreement States without rules for an AIF would have to either conduct a rulemaking before reviewing the license application or provide licensing criteria in establishing licensing procedures.

Con: If a facility were licensed without a rule and a subsequent rule used criteria different from those used in the license review, the applicant - or licensee - might have to expend resources to amend an application or license to meet the new criteria.

Con: Does not address the problem of diminishing waste disposal capacity.

Con: Multiple rulemakings by States, and the possible later rulemaking by NRC, would probably require more resources than a single rulemaking prepared by the States and NRC.

2. Proceed with rulemaking.

a. NRC would take the lead in developing a rule and would collaborate with States.

Pro: A rule may be developed before an application is filed, providing uniform national criteria and standards to guide an application and NRC and Agreement State review of an application.

Pro: The licensee would not have to amend the application or license to meet new criteria.

Con: It would take considerable resources to develop a rule for a facility whose development is quite speculative at this time. It may raise licensees' expectations that AIFs will be available if they are unable to dispose of waste and it may reduce the incentive to develop disposal facilities, under the Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPAA), or to make provisions for reduction of waste volumes or extended onsite storage.

b. The States, through CRCPD, would take the lead and NRC would participate.

Pro: A rule may be developed before an application is filed, providing uniform national criteria and standards to guide an application and NRC and Agreement State review of an application.

Pro: The licensee would not have to amend the application or license to meet new criteria.

Pro: The resources for rulemaking, although still considerable, would be spread among NRC and the States. This would be a pilot project under the Alliance option of the National Materials Program.

Con: It would take considerable resources to develop a rule for a facility whose development is quite speculative at this time. It may raise licensees' expectations that AIFs will be available if they are unable to dispose of waste, and may reduce the incentive to develop disposal facilities under the LLRWPAA or to make provisions for reduction of waste volumes or extended onsite storage.

3. Defer further rulemaking and annually review the future need for disposal or storage of LLW, State and Compact positions, and industry interest for both generators and prospective operators. If the need and interest warrant consideration of rulemaking, propose options to the Commission. If the CRCPD proceeds with development of its SSRCR, NRC would provide a liaison to the CRCPD and participate in peer review of the CRCPD suggested regulation.

Pro: This would avoid an unnecessary expenditure of resources and permit NRC and Agreement States to respond in a timely manner to the need for, and interest in, an AIF in the future.

Pro: Any applicable compensatory measures for security could be incorporated into a rule that could take into account the added cost and complexity of an AIF and of regulation.

Pro: This approach would allow NRC to review and comment on the CRCPD suggested regulation while limiting the expenditure of NRC resources at this time.

Con: No criteria nor standards are currently in place to guide an application or review of an application.

Con: If an applicant unexpectedly indicated intent to apply for an AIF license, without rules for an AIF, NRC and Agreement States would have to either conduct a rulemaking before reviewing the license application or provide licensing criteria in establishing licensing procedures.

Con: If a facility were licensed without a rule and a subsequent rule used criteria different from those used in the license review, the applicant - or licensee - might have to expend resources to amend an application to meet the new criteria.

4. Within available resources, review, and revise or supplement, as necessary, NRC guidance for extended onsite storage and other alternatives to disposal, including security considerations, if, in the future, it appears likely that generators will lose access to disposal soon.

Pro: This would leave NRC, and licensees, in a better position to deal with a possible loss of access to disposal, regardless of other actions and can be done relatively quickly.

Con: This would not solve the long-term problem of dealing with low-level waste.

Note that Option 4 could also be done in conjunction with Options 1, 2, or 3.