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March 15, 2000

Mr. David L. Meyer, Chief
Rules and Directives Branch, Mail Stop T6D59
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

RE: NRC'S DRAFT STRATEGIC PLAN FOR FISCAL YEARS 2000 - 2005

Dear Mr. Myer:

These comments are in response to the Request for Public Comment in the Federal Register of March 3, 2000:

Page 19 - Nuclear Waste Safety (Performance Goal: Maintain safety, protection of the environment, and the common defense and security)

Comment:

The draft Plan states that, "[w]ith respect to the High Level Waste Program, the NRC is applying a regulatory framework to prelicensing reviews and consultations with the Department of Energy (DOE) to resolve issues most important to repository safety and preparing to address the licensing phase of this process if the President and Congressional decisions are made regarding site approval and a license application is submitted."

The State of Nevada reiterates its concern that pre-licensing interactions must not proceed beyond the "informal conference" provided for in 10 CFR Part 60. As we stated in response to the NRC Strategic Assessment in 1996, the Commission's activities relative to the high-level waste program include pre-licensing interactions with DOE, are limited by 10 CFR 60 to only "informal conference" between the prospective applicant and the NRC Staff, and must not involve not binding resolution of any licensing issues. This serves to reinforce to the public, as it should, the independence and objectivity of the Commission as a regulator of the repository program.

Comment:

The draft Plan states that “the public means a diverse group of stakeholders who are affected by or who affect NRC’s programs in this arena. Stakeholders include Congress, the NRC and Agreement State licensees, other Federal agencies, States, Indian Tribes, local governments, industry, the industry workers, the international community, citizen groups, and rate payers.” While this definition of the term “public” appears inclusive, it does not specifically reference the general public. These are people for whom the assurance of safety is ultimately intended - the people who live in communities proximate to nuclear waste facilities; people who share the highways or come into contact with railways where nuclear waste is being transported; people who are not members of Congress, the nuclear industry or industry workers, or perhaps not even ratepayers. In short, NRC should not forget that its ultimate responsibility is to protect the health and safety of the general public, not just specific stakeholder groups no matter how inclusive that listing of groups might be.

Nevada continues to believe that the best and only way to increase public confidence in the safety of nuclear waste facilities and activities is for implementing and regulatory agencies to go beyond what may be minimally required and take steps to demonstrate that public health and safety are paramount concerns to the responsible federal agencies. In this regard, Nevada strongly recommends that NRC move expeditiously to require full scale compliance testing of all transportation containers for spent fuel and high-level radioactive waste, and that appropriate testing requirements be put in place for shipping containers for other forms of radioactive waste.

As we noted in our 1996 comments on the Strategic Assessment document, insuring public confidence in the transportation spent fuel and high-level waste requires NRC to reevaluate its position on three critical issues: full-scale physical testing of shipping casks, the use of probabilistic risk assessment in transportation risk analyses, and the vulnerability of spent fuel and HLW shipments to sabotage and/or terrorist attack.

An important aspect of instilling public confidence in NRC’s regulatory role is to assure that the line between regulator and the entity being regulated/overseen is strictly maintained. NRC’s practice of having NRC staff act as advocates for applicants in licensing proceedings certainly gives the impression that NRC is not acting strictly impartially and as a regulator.

Page 23 - Nuclear Waste Safety (Performance Goal: Make NRC activities and decisions more effective, efficient, and realistic)

Comment:

The final bullet relating to measures NRC will employ to meet this goal states that NRC will “Complete all major prelicensing milestones needed to prepare for a licensing review of the Yucca Mountain repository, consistent with DOE’s schedules and before DOE submits its license application.” Such pre-licensing milestones must not involve more than the “informal conference” interactions referred to above.

In addition, the wording for this measure should be revised to indicate that NRC’s actions will be “... consistent with **public safety and the public interest** and DOE’s schedules and before DOE submits its license application.” NRC should not, in any way, allow considerations of schedule to compromise or appear to compromise its public protection mission.

Page 23 - Nuclear Waste Safety (Performance Goal: Reduce unnecessary regulatory burden on stakeholders)

Comment:

In the first paragraph dealing with this performance goal, the draft Plan defines “unnecessary regulatory burden” as “a set of regulatory licensing information and analysis requirements that goes beyond what is necessary and sufficient for providing **reasonable assurance** that public health and safety, the environment, and the common defense and security will be protected” (emphasis added). It is not at all clear that “reasonable assurance” is an appropriate standard for the protection of the public from the health, safety, and environmental dangers posed by nuclear waste storage, handling, transportation, and disposal. The public expects that NRC will assure its protection from the hazards posed by nuclear activities and nuclear waste activities in particular. What is reasonable to NRC might be seen as wholly inadequate by the “public” affected by specific nuclear waste activities. This term need to be better defined or simply replaced with NRC’s **assurance** that public health, safety, and the environment will be protected. Whatever regulatory burden is required to make that assurance is the appropriate level of regulation.

The third paragraph under this performance goal refers to making decisions “with no undue conservatism” and considering the regulatory burden associated with a safety enhancement in light of “a cost benefit analysis.” These pronouncements may be viewed as inappropriate and even counterproductive in assuring public health and safety with respect to things nuclear. Conservatism should be the cornerstone of health and safety regulatory approaches for nuclear activities. This is especially true in the case of nuclear

waste disposal facilities, where uncertainties about future performance and waste isolation are so great as to demand great conservatism in regulations.

The same is true for balancing costs with the appropriate and necessary regulatory burden. NRC should not permit itself to fall into the trap whereby the protection of public health and safety becomes a matter of cost-benefit trade offs. There are areas where costs may be seen to be excessive, but are nonetheless required to compensate for the risks and uncertainties.

To shift the focus of a regulatory agency such as NRC to one of avoiding “undue conservatism” and emphasizing cost-benefit calculus would be especially troublesome in the case of a high-level waste repository because institutions and bureaucracies tend to evolve their corporate cultures over time. Where a performance goal today seeking to limit conservatism and reduce costs may be seen as a moderate and reasonable step in attempting to deal with the regulatory burden placed on licensees, this same goal can, over time, become a strong and potentially negative influence on how health and safety regulations are implemented and enforced. This is especially troubling in the case of the proposed Yucca Mountain repository, a facility of unprecedented function and duration. Extreme conservatism should be the watchword for Yucca Mountain, regardless of the costs that might result from needed health and safety regulations.

I hope this comments are helpful in developing a Strategic Plan that supports and promotes NRC’s principal mission of protecting public health and safety in the nuclear arena.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a large, sweeping flourish extending to the right.

Robert R. Loux
Executive Director

RRL/cs