

AUG 11 1992

Mr. Robert R. Loux, Director
 Agency for Nuclear Projects
 Nuclear Waste Project Office
 State of Nevada
 Carson City, Nevada 89710

Dear Mr. Loux:

SUBJECT: REPLY TO YOUR LETTERS OF JUNE 16, 1992

This letter responds to your June 16, 1992, letters to Chairman Selin and John J. Linehan on prelicensing interactions between the staff of the Nuclear Regulatory Commission and the Department of Energy (DOE). In your letters, you discuss issue resolution at the staff level during prelicensing consultation. You are correct in your statement, which reflects the language in Section 60.18(1) of 10 CFR Part 60, that "...the NRC staff cannot bind the Commission, the ASLAB, other presiding officers or the Director in any subsequent proceeding." The agency position on issue closure, which is based on 10 CFR 60.18(1), remains as it was discussed in the February 6, 1992, NRC/DOE Management Meeting on Prelicensing Consultation, which was attended by representatives of the State of Nevada and documented in your March 27, 1992, letter to Mr. Linehan, as modified in his May 6, 1992, letter to you. This position was reaffirmed by the Commissioners during a June 24, 1992, presentation to them by Dr. John Bartlett of DOE.

You also note in your letter to Mr. Linehan, that the staff has stated that issue resolution at the staff level only means that there are no more questions and no more disagreements, at a particular point in time. What is not stated in your letter is the equally important point that the staff has both the right and the responsibility to reopen any issue, or to request further information on any issue, at any-time during the prelicensing period when warranted by new information or analysis. This has been, and remains, an integral part of the NRC staff's position on issue resolution during the prelicensing consultation period. I believe that it is important to recognize that NRC will continue to adhere to its position on issue resolution, regardless of whatever strategies other parties choose to pursue.

With regard to your specific concern on the NRC staff's interactions with DOE on the annotated outline for DOE's proposed topical report on erosion, the staff's primary purpose in holding the technical exchange was to provide comments to DOE on the general format and construction of a sample topical report. The staff's willingness to provide such guidance to DOE is within the bounds of prelicensing consultation as discussed in both the

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February 6, 1992, NRC/DOE management meeting and the May 27, 1992, NRC/DOE technical exchange. While there was some discussion of the technical merits of the information on erosion, it was incidental to the NRC staff's main purpose of the exchange. In this regard, it should be remembered that one of the ground rules of technical exchanges, as opposed to formal meetings between the NRC staff and DOE, is that formal agency positions are not developed at such interactions. It is the staff's standard practice to develop a statement of scope, purpose, and limit of review for significant documents, prior to review. Accordingly, the staff will develop such a statement prior to the review of any DOE topical report. In no way was the staff's action at the May 27, 1992, technical exchange considered a retrenchment from the commitments made at the February 6, 1992, meeting.

I hope that this information resolves your remaining concerns about the NRC staff's position on issue resolution.

Sincerely,

15/
B. J. Youngblood, Director
Division of High-Level Waste Management
Office of Nuclear Material Safety
and Safeguards

cc: T. J. Hickey, Nevada Legislative Committee
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C. Gertz, DOE/NV
S. Bradhurst, Nye County, NV
M. Baughman, Lincoln County, NV
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*see previous concurrence

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