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NYE COUNTY COMMENTS ON

PROPOSED 10 CFR PART 63

**DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE IN A PROPOSED
REPOSITORY AT YUCCA MOUNTAIN, NEVADA**

RIN 3150-AGO4

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As a prelude to our comments on the substance of the proposed modifications to the licensing regime embodied in Part 63, Nye County would first like to acknowledge the efforts made by the NRC in affording opportunities to the county's residents to comment on this proposal. The public meetings held in Beatty, on March 25, and Amargosa Valley on June 15, have provided those most affected by this proposal, the people living in the immediate vicinity of Yucca Mountain, as well as along the transportation corridors leading directly to the repository site, the chance to hear the NRC staff explain its proposal, and to express their own views on it as well as the overall program, in convenient locations and times. We commend the NRC for coming to Nye County to hear from those affected parties.

Introduction

These written comments memorialize and supplement, in summary fashion, the comments submitted by the Nye County representatives at the public meetings in Las Vegas on March 23, Beatty on March 25, and Amargosa Valley on June 15, 1999. It is our understanding that transcripts of each of those meetings will be incorporated into the record of this rulemaking, and made available to the public.

In lieu of repeating what was said at those meetings we incorporate herein, and adopt as Nye County's formal comments, the remarks made, albeit at the time only preliminary, by the County's representative on the substance of the proposed Part 63. We will repeat here, in summary format, only the highlights of Nye County's views on several issues raised by the proposal that we consider to be of particular importance.

With respect to any provisions or language of the proposed Part 63 which are not addressed here, or were not commented on in the public meetings referred to above, Nye either agrees with the staff proposal, has no objection, or believes that the provision or language is not a particularly significant departure from the current repository licensing regulations found in 10 CFR Part 60.

General Approach of the Staff Proposal

Nye County acknowledges that the general approach taken by the staff in the proposed Part 63 is consistent with the requirements of Sec. 801 of the Energy Policy Act of 1992, (42 USC 10141 note), assuming, of course, that it is also consistent with the final standards adopted by the Environmental Protection Agency under that act.

We still see no policy or technical reason to depart from what we said to the National Academy of Sciences Committee on Yucca Mountain Standards, that we would prefer that both the EPA standards and NRC licensing regulations be stated in terms of release criteria, rather than a dose standard. That is principally because we feel a release standard is a more direct, easier and simple way to measure whether or not the repository is performing as expected. While we do not agree with what Congress did, however, we

understand that in 1992 the discretion to make that decision was effectively removed from both the EPA and the NRC when Congress mandated a risk-informed, health based standard, assuming that the NAS agreed.

Given the current regulatory scenario handed to the agencies by Congress, we do agree that such a risk-informed, health based approach, while perhaps not the best, will provide a reasonable standard for the protection of the health and safety of the general public. As always, the devil is in the details, or, in this case, the numbers.

Characteristics of the Reference Biosphere and Critical Group

As stated during the public meeting in Las Vegas on March 23, Nye County expresses a qualified agreement with the description of the reference biosphere and definition of the critical group found in §63.115. Limiting the reference biosphere that the DOE will have to assume in its total system performance assessment to "features, events and processes ----- consistent with present knowledge of the conditions in the region surrounding the Yucca Mountain site", will avoid unnecessary, and perhaps indefensible, speculation on how future societies might live.

We do question, however, the use of a critical group defined as a farming community of approximately 100 individuals located just north of the intersection of US 95 and Nevada Route 373, at Lathrop Wells. That is probably unsupportable speculation. We believe it much more likely that a commercial and light industrial zone, rather than farming, with perhaps some residential sites mixed in, will be found in that area, probably long before the repository is permanently closed. However because, for purposes of determining predicted doses to individuals or groups of individuals, assuming a farming community is a more conservative approach, and thus is more protective of the general health and safety, we support the current language of that section.

Performance Objective

Nye County values its neutrality in this process very highly, and for that reason has always tried to base its technical views and positions on the expertise and judgments of its own staff and contractors. Because we do not have available, either as county employees or contractors, expertise in the area of allowable doses, or level of protection, we take no position on the adequacy of the 0.25mSv (25mrem) total effective dose equivalent expressed in §§63.111 for pre-closure performance and 63.113 for post-closure performance, with this qualification. We assume that the NRC will, as §801 (b) of the Energy Policy Act requires, amend its final rule, or modify this proposal if not yet final, to render its performance standard "consistent with" whatever standard is adopted by the EPA. We understand that the EPA is considering a dose standard as low as 15 mSv (15 mrem), and would thus expect the NRC final standard, at the time of licensing, to be no higher. This is not only statutorily required, but in our view is good policy. There can be no justification for the residents of Nye County, because they live in the vicinity of Yucca Mountain, to be subject to a different and less stringent standard than people in the rest of the country.

Additional Groundwater Protection Standard

We agree with the staff that groundwater is not only the most likely, but is probably the only effective pathway to the Nye County public from Yucca Mountain. For that reason we reach a different conclusion than the staff proposal on the subject of additional groundwater protection. We are familiar with and acknowledge the scientific justifications advanced by the staff in support of their proposal, including the recent letter from Janet Kotra, Senior Systems Performance Analyst, High-Level Waste and Performance Assessment Branch, Division of Waste Management, to Abigail Johnson, the Nuclear Waste Advisor to Eureka County, Nevada. Nevertheless, we see no reason at this point to treat the Yucca Mountain project any differently under the Safe Drinking Water Act than any other similar project. Those projects, including the WIPP facility in New Mexico, are required to comply with separate groundwater protection standards expressed as maximum contaminant levels. Because groundwater is so critical to the residents of the Amargosa Valley, and Nye County in general, there can be no legitimate reason to afford them any level of protection for their groundwater that is less than that afforded people elsewhere. Whether or not the maximum contaminant levels found in the EPA Safe Drinking Water Act regulations provide any significantly greater level of protection is not really the issue. It is, rather, one of equity and fairness, and perceived equality of treatment for people living in different parts of the country.

Formal vs. Informal Licensing Process

Finally, we again want to express in the strongest terms Nye County's opposition to the suggestion raised in the Supplementary Material to this proposal to consider holding the Yucca Mountain licensing proceeding under informal, rather than formal adjudicative and evidentiary, hearing rules. In our view it would be the height of irresponsibility to depart from the NRC's well established, and very workable, evidentiary hearing rules found in 10 CFR Part 2 for this highly complex and first of its kind licensing proceeding. It is virtually inconceivable to most detached observers that the decision whether or not to allow the construction, and eventual loading, of the first permanent repository for spent nuclear fuel and high-level nuclear waste in the world should be made only after what amounted to essentially a rule-making process.