

Lincoln County
NUCLEAR OVERSIGHT PROGRAM
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June 25, 1999

Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff

OFFICE OF
GENERAL
ADMINISTRATION

RE: Comments to Proposed 10 CFR Part 63

To Whom It May Concern:

On behalf of Lincoln County and the City of Caliente and their Joint City/County Impact Alleviation Committee, I am pleased to submit the following comments to the Nuclear Regulatory Commission's February 22, 1999 Notice of Proposed Rulemaking regarding establishment of a new 10 CFR Part 63. Let me note that the County and City greatly appreciate the participation of Commission staff in a June 17 public meeting in Caliente. NRC staff present at the meeting were well informed and provided important insights to the role of the NRC, the need for a new 10 CFR Part 63, and specific information about the proposed rule. The comments which follow are intended to aide NRC in developing a final rule which will best result in protection of public health and safety.

1. Lincoln County and the City of Caliente are concerned that both the Department of Energy (DOE) and the Nuclear Regulatory Commission (NRC) appear to have de-emphasized transportation as an issue in site characterization activities to date. Because transportation may pose the greatest source of exposure risk during the emplacement phase of the waste management system, NRC is encouraged to further amend its regulations to ensure that transportation issues such as modal and route choice, cask testing, and enhancement of local emergency first responders and emergency medical services are addressed by the Department of Energy in its application for a license to construct a repository at Yucca Mountain.
2. Lincoln County and the City of Caliente encourage NRC to consider an additional critical group whose exposure is based on atmospheric pathways. Historically, radiation exposure from activities at the Nevada Test Site have resulted from atmospheric pathways. The DOE will not be able to eliminate entirely the possibility that radiation may migrate from the repository through rock fractures. Low-probability tectonic events, human intrusion, or nuclear criticality are all scenarios which are being evaluated by the DOE. Although the likelihood of any of these events is quite low and the potential for measurable release of radiation from these occurrences is very small, the possibility remains and the consequences could be significant.

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3. Effective minimization of risk, one of the cornerstones of the City/County joint repository oversight program, will require mitigation of conditions which may contribute to risk. One of these conditions is the extent to which local emergency first responders and emergency medical service providers are prepared to deal with radiation. Lincoln County and the City of Caliente must be assured that local emergency first response and emergency medical services will be enhanced in a manner making the management of exposure risk to radiation fully achievable. The County and City believe that such assurance of mitigation may only be possible as a condition of the licenses the Department of Energy receives to construct and eventually operate a repository at Yucca Mountain. Lincoln County and the City of Caliente request that NRC include the enhancement of local emergency first response and emergency medical services as a condition of licenses issued to DOE to construct and to operate a repository at Yucca Mountain.
4. It is not clear why the NRC is proposing a 25 mrem/yr. exposure limit for the repository when the National Academy Of Sciences (NAS) has recommended an exposure limit between 10-30 mrem/yr. The proposed rule should be changed to require DOE to propose a repository system comprised of both natural and engineered barriers which achieve exposures which are "as low as reasonably achievable" (ALARA) but not greater than 25 mrem. The rule should further require DOE to provide a cost-benefit analysis for repository design features which might achieve exposure levels below 25 mrem.
5. The NRC's explanation of the proposed rule published in the Federal Register notes that the 25 mrem was drawn from work done on the previously proposed monitored retrievable storage (MRS) system. However, the MRS was proposed and dropped from further consideration prior to the 1995 NAS study. The proposed rule should provide a better justification of why NRC elected to use information from dated MRS studies rather than more recent NAS work.
6. The proposed rule states in Section V. that the final dose limit proposed in the regulation will "fully" protect the public and the environment. The text does not define what the term "fully" means. Does it mean no exposure, no acute or latent consequences, no biological damage, and/or no mortality? Such an explanation should be provided in the final rule.

7. Section 63.115 of the proposed regulation offers criteria for identifying a critical group and reference biosphere that the Nuclear Regulatory Commission believes provide a reasonable basis for demonstrating compliance and that preclude unbounded speculation. Does NRC believe that the imposition of a new regulation will remove speculation about the appropriateness of assumptions regarding who may get exposed and under what conditions? If the intent of this section of the rule is to reduce uncertainty and speculation about assumptions, then the criteria offered should be fully defensible and not subject to speculation themselves. NRC needs to give further thought to this section of the rule. As written, it is not clear that speculation or controversy about the definition of a critical group will be reduced.
8. The NRC assumed critical group is down-gradient to the repository from a hydrologic standpoint and is assumed to be exposed through contamination of groundwater. Because historic exposure to radiation at NTS has been from atmospheric sources, and because DOE can not rule out the possibility for significant exposures due to atmospheric sources, a critical group located "downwind" from the repository exposed as a result of unanticipated atmospheric releases should also be considered in the proposed rule.
9. At Section 51.67 of the proposed regulation NRC has not required DOE to include in its final environmental impact statement measures to mitigate impacts, including those relating to transportation aspects of the waste management system. The final rule should include such a requirement.
10. The proposed explanation of the revision states on page 8646 that the Yucca Mountain climate could become cooler and wetter during the next ice age. Has the NRC determined with certainty that another ice age will occur, particularly during the life of the repository? If such a determination has been made, references should be provided. If such a determination has not been made the final rule should be revised to reflect greater uncertainty with regard to climate change.
11. Page 8647 of the explanation of the revised regulation notes that the Waste Isolation Pilot Project (WIPP) and Yucca Mountain are similar, making EPA standards already promulgated for WIPP a likely model for Yucca Mountain. In what ways does NRC view Yucca Mountain and WIMP to be similar? Are there notable dissimilarities between the two sites? Answers to these questions should be provided in the final rule to justify use of WIPP as a surrogate for Yucca Mountain.

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12. At Section 63.61 the proposed regulation should be revised to include provision of "timely and complete information" to affected units of local government.

13. At Section 63.63 the determination that the State of Nevada and any affected Indian Tribe shall have an unquestionable legal right to participate as a party should also include affected units of local government.

In closing, let me again thank the staff of the Nuclear Regulatory Commission for travelling to Caliente to meet with us. Our confidence in the Commission's ability to issue licenses to the Department of Energy to construct and operate a repository at Yucca Mountain in a manner which protects public health and safety is largely dependent upon our understanding of the role and functioning of the Commission and its staff. The Commission staff presence in Caliente on June 17 was very helpful in establishing our confidence that radioactive wastes can be safely managed.

Sincerely,



Yvonne Culverwell
Administrative Coordinator

cc: Mr. Dan Frehner, Chairman, Lincoln County Commission
Mr. Kevin Phillips, Mayor, City of Caliente
Members, Joint City/County Impact Alleviation Committee
Affected Units of Local Government