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July 25, 2002

Mr. Michael T. Lesar
Chief, Rules and Directives Branch,
Division of Administrative Services,
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U.S. Nuclear Regulatory Commission
Mail Stop T-6D59
Washington DC 20555-0001

3/29/02
67 FR 15259
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Re: Comments on Yucca Mountain Review Plan, NUREG-1804, Revision 2

Dear Mr. Lesar:

The National Association of Regulatory Utility Commissioners (NARUC), on behalf of State public utility commissioners, provides the attached review comments on the draft Yucca Mountain Review Plan.

It is important for NRC staff and Department of Energy personnel preparing and reviewing the license application to have a common understanding of what is expected in this important and first-of-a-kind licensing process. Stakeholders outside the process also will benefit from having the Review Plan as well. We appreciate the opportunity to review the draft document and to provide comments. There will no doubt be areas to further clarify and improve in the final Plan, but to us it seems thorough, useful and plainly worded. We urge consideration of more extensive comments from DOE and nuclear industry reviewers who are more familiar with other types of NRC licensing.

We urge an expeditious turnaround on revisions to the Plan so that it can be made available in final form.

Sincerely,

Brian O'Connell
Director, Nuclear Waste Program Office

cc: Dr. Margaret Chu, DOE

Template = ADM-013

FRIDS = ADM-03
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Comments on Draft Yucca Mountain Review Plan (NUREG 1804) Revision 2
by the
National Association of Regulatory Utility Commissioners
June 2002

1. The Review Plan is simple and well-presented

Both the extensive Table of Contents and the Review Plan process diagram in Figure 1-2 give the Plan user a step-by-step roadmap of the license review process. Each review element is clear in its purpose, criteria and review method. This should allow clarity and understanding so that the preparers of the application and reviewers know what is expected.

2. The Review Plan supplements 10 CFR Part 63

There is a significant note on page 1-3 that the purpose of the Review Plan is for guidance of the NRC staff responsible for the review of the Yucca Mountain application and that the Review Plan is not a substitute for NRC regulations. 10 CFR Part 63 governs the license process and the Review Plan further defines how the application will be reviewed and prepared for licensing decisions.

It may be useful to add as an appendix a chart to cross references sections of the Review Plan to 10 CFR Part 63.

3. The Review Plan should be performance-based and risk-informed

The Review Plan has recognized the NRC doctrine of being risk-informed and performance-based. This is the appropriate way to provide for the protection of health and safety for involved workers and the public. We are aware of suggestions by the Nuclear Energy Institute in their review comments to ensure that both the applicant and NRC apply risk-informed performance-based judgements at each step in the application process.

4. The step-wise licensing approach is appropriate

10 CFR Part 63 defines the three primary licensing stages for the repository. This is consistent with the National Academy of Sciences Board of Radioactive Waste Management 2001 report *Disposition of High-Level Waste and Spent Nuclear Fuel*. Each subsequent step is able to gain knowledge from

the performance and monitoring experience in the intervening time between license stages. DOE repository program managers have emphasized that the repository program will continue to learn more about the science of the repository and its component elements. Further, there may be technological improvements beyond the repository that allow innovation and confidence building in repository system performance.

5. Flexibility is appropriate for the repository licensing

We believe it is appropriate to have the Review Plan say, “Methods and solutions different from those set out in the Yucca Mountain Review Plan will be acceptable if the U.S. Department of Energy provides a basis for the findings requisite to the issuance or amendment of a license by the U.S. Nuclear Regulatory Commission.” (Page 1-3) That approach recognizes that this is a first-of-a kind facility and it is difficult to forecast what questions may arise about such an undertaking. Flexibility is a guiding principle that should be followed by the license review team. Sampling of sections of the draft Review Plan shows there are many instances where flexibility is shown.

We did not fully review Sec. 4 Review Plan for Safety Analysis Report, but its bulk suggests it may be more proscriptive than the flexibility principle suggests. The real test will be if the DOE license application preparers find it useful or overly confining. It looks like a helpful guide.

6. Clarification is needed on reasonable assurance and reasonable expectation

There seems to be some use of these terms in the Review Plan that suggests that they are interchangeable. Our interpretation of 10 CFR Part 63 is that reasonable assurance is the appropriate regulatory standard in the pre-closure application, as it is at existing licensed facilities, but reasonable *expectation* is the appropriate standard of proof for the post-closure period. There are greater uncertainties in the post-closure case, so it would be more difficult to show reasonable assurance. Perhaps this distinction can be clarified in the final Review Plan.

7. The acceptance review needs to be timely but not time limited

While the thoroughness of the Review Plan should help improve the completeness and quality of the license application, there may still be gaps in the material delivered with the application. It is a good idea to have the acceptance review step as the “first screening” of the application without getting into determination of technical adequacy of the submitted information.

Since many stakeholders will be looking upon the results of the acceptance review as an indicator of the quality of DOE's license application and even as a predictor of whether the license will ultimately be granted, we hope there is no suggestion of weakness of the application if some elements are not submitted with the initial application. We would hope that the acceptance review is done in a collaborative manner and that additional material can be provided incrementally so long as NRC is assured that it will be available.

8. Future Review Plan revisions are envisioned

In a March 2002 presentation to the ACNW on the Review Plan, an NRC staff member said, "The YMRP is a living document." We agree with that. As an example, the presenter said that if the on-going review of NRC physical protection requirements being conducted in the wake of September 11 events leads to any revisions to Yucca Mountain repository plans, the YMRP would be revised. Further, since there will be a long period between initial emplacement of waste in the repository and the license amendment to close the repository, it is realistic to anticipate and accommodate changes.

9. Staff resources should be dedicated to license review

Not directly related to this document review, but we cannot help think about the importance of adequate numbers and qualifications of the license review team that such a task of reviewing a complex and voluminous application requires. We support NRC budget and staffing levels for a project of this importance and magnitude. We have communicated our concerns to Congress and the Administration to reform the Nuclear Waste Fund so that it is available to serve its intended purpose. Certainly the revenue for the Fund continues to flow in at a growing rate but Congress will need to understand and support appropriation increases that match the needs of the repository program, which includes related NRC expenses.

10. Communications and training are desirable

Since the license review process is expected to take three or four years and there will be several years before it starts, there will be new personnel in the various stakeholder organizations that will want to be involved in the license review process. To help them as well as those who continue to be involved, it would help to have some training materials that summarize what 10 CFR Part 63 and the Review Plan are about. Further, it may be useful for all parties to have workshops or progress reviews that supplement the expected availability of application documentation through the Licensing Support Network.