



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 12, 1997

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

Dear Mr. Loux:

I am writing in response to your January 27, 1997, letter in which you express the State of Nevada's concerns about the U.S. Department of Energy (DOE)/U.S. Nuclear Regulatory Commission staff attempts to address issues with respect to the ongoing high-level radioactive waste (HLW) program at Yucca Mountain, Nevada. Your letter suggests that the NRC staff is placing increased emphasis on issue resolution and you express concern about the willingness of both DOE and NRC to re-visit, in the future, any issues (including so-called "open items") closed at the staff level prior to the submittal of a potential license application. Moreover, you also suggest that there are disincentives to re-visit such issues owing to the resource constraints now imposed on the HLW program. Finally, your letter indicates that you believe it is premature to seek resolution of the igneous activity issue through consideration of DOE's total-system performance assessment (TSPA)-viability assessment.

The staff does not share your view that there has been a change in the implementation of the issue resolution process by the two agencies. As you know, the staff's position on issue resolution was first expressed at a February 6, 1992, DOE/NRC management meeting on pre-licensing consultation, which was attended by representatives of the State of Nevada. This position was subsequently clarified in letters to you dated May 6, 1992, and August 11, 1992. Simply stated, this position consistently has been (and is) that issue resolution, at the staff level, means that there are no more questions and no more disagreements, at a particular point in time. Moreover, the staff has both the right and the responsibility to reopen any issue, or to request further information on an issue, at any point in the pre-licensing consultation period, or later, during the review of a license application.

As regards your view that the staff is placing increased emphasis on issue resolution and attaching new implications to it — i.e., for some issues, resolution now appears to essentially imply "closure" with no further inquiry by the staff — again, the staff does not share your view. What your letter does not acknowledge is that there has always been an attempt by the two staffs to focus on those issues and concerns that are most important. This approach was envisioned by the Commission in its final rule for 10 CFR Part 60, in which the Commission noted that it contemplated an ongoing review of information on site investigation and site characterization, such as those with long lead-time procurement actions, so as to allow for the early identification and resolution of potential licensing issues. The Commission felt that this approach would help to reduce the number of, and to better define, issues that will be litigated during a potential licensing hearing, by obtaining input and striving for consensus from the technical community.

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interested parties, or other targeted groups (including the State of Nevada) on such issues. What this approach means to the geologic repository program is that only the independent Licensing Board can define, based on the record before it, what issues (e.g., volcanism) are or are not closed, at the time of licensing. Therefore, the State of Nevada's suggestion that issue resolution would be binding to the staff, in the future, is not consistent with previous licensing practice.

Because some of the staff currently in place — both at NRC and at DOE — may not be associated with the HLW program at the time of a license application submittal (currently calendar year 2002), the staff is doing all it can do today to ensure that there is transparency in all HLW program decision-making. This includes those decisions related to issue resolution, to the extent that any issue is amenable to closure. In this regard, the staff regrets that the State of Nevada declined an invitation to participate in the February 1997 technical exchange on igneous activity at Yucca Mountain. As you know, the purpose of this technical exchange was to attempt to reach consensus on the approach to be used by DOE to consider igneous activity in its TSPA/viability assessment, and to identify areas of agreement and disagreement on the relevant geologic data, the probability of volcanism, the models used for calculating consequences, and the performance assessment models of igneous activity. This particular forum would have afforded the State of Nevada an opportunity to express its views on these important issues. Inasmuch as the dialogue with the Department will continue in many areas related to Yucca Mountain volcanology, the staff encourages the State to identify its specific technical concerns so that they might be included in the on-going discussions.

Finally, your letter does correctly point out that the HLW program is now operating under the constraints of reduced funding levels compared to previous years. In light of this and other developments, both NRC and DOE have made adjustments to their respective programs to place greater emphasis on performance assessment. For example, the staff has streamlined and refocused its HLW program to focus on those Key Technical Issues (KTIs) considered to be most important to overall repository performance and thus licensing. As noted in its recent KTI progress report (NUREG/CR-6513), the staff will periodically reevaluate the significance of KTIs in light of new information as well as the results of more improved performance assessments. These reviews are intended to indicate where new analyses or data are needed to narrow uncertainties. Inasmuch as a TSPA will be a centerpiece of DOE's viability assessment and ultimately the license application, it is the staff's view that performance assessment tools, including sensitivity and importance analyses, can and should be used, not only to evaluate the issues themselves, but also to provide insights into the possible strengths and weaknesses of this technology in regulatory decision-making.

R. Loux

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In closing, NRC staff will continue to implement its aforementioned policies in order to prepare for the potential licensing of a geologic repository with the goal of focusing on those issues most important to public health and safety.

Sincerely,
[Original signed by:]

John T. Greeves, Director
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

- cc: R. Milner, OCRWM
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- B. Price, Nevada Legislative Committee
- J. Meder, Nevada Legislative Counsel Bureau
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