

Central files
ONLY

UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

October 4, 1995



OFFICE OF THE
GENERAL COUNSEL

MEMORANDUM TO: Joseph J. Holonich, Chief
High-Level Waste and Uranium
Recovery Projects
Division of Waste Management
Office of Nuclear Materials Safety
and Safeguards

FROM: Roland M. Frye, Jr., Attorney *Rmf*

SUBJECT: LETTER TO RONALD A. MILNER (DOE), DATED
AUGUST 15, 1995, REGARDING "TRANSMITTAL OF
EVALUATION OF U.S. DEPARTMENT OF ENERGY'S
MINED GEOLOGIC DISPOSAL LICENSE APPLICATION
ANNOTATED OUTLINE FOR CHAPTER 10.0, 'QUALITY
ASSURANCE' "

We offer the following comments regarding your August 15, 1995 letter and its attached preliminary draft of the NRC staff's evaluation of DOE's Mined Geologic Disposal License Application Annotated Outline for Chapter 10.0 (Quality Assurance).

First, we would like to discuss the question of staff's plans to invite public comment on this letter and its attachment. Section 60.18(i) of the Commission's regulations provides that "The Director [of NMSS] shall invite public comment on any comments which the Director makes to DOE upon review of the DOE semi-annual reports or on any other comments which the Director makes to DOE on site characterization." It appears from the "cc" list immediately following the cover letter that the letter itself was provided to many of the participants for comment. It is not apparent, however, whether the attachment was also sent to those on the "cc" list, or whether the letter and attachment were placed in the Commission's Public Document Room.

Second, at page 10.1 of your evaluation (§ 10.1 at ¶ 1, line 2), you indicate that the purpose of staff's acceptance review in the PER is to provide "guidance" to DOE. We think there is a potential issue of whether the word "guidance" may be inappropriate, or susceptible to being misunderstood, when used in a document such as a PER. The use of that word could lead DOE to view that staff's comments on the level of official Commission "Regulatory Guidance" (or even de facto requirements) rather than merely staff's comments. We would like to discuss whether, in future correspondence and preliminary evaluations, the staff would consider use of terms such as "comments" or "views."

290002

NRC FILE CENTER COPY

9605290026 951004
NMSS SUBJ
102.7 CF

96-28

102.7
11/10

Third, at page 10.1 (Introduction to Ch. 10, at ¶ 2, lines 4-5), you indicate that "[i]n the LAAO, ... DOE must demonstrate that the QA program for the repository complies with [the] requirements" of 10 C.F.R. Part 50, Appendix B and Part 60, Subpart G. (Emphasis added.) Similarly, there are numerous places in the evaluation where staff tells DOE what it "should" have done in the past or what it "should" do in the future. We would like to discuss whether these formulations connote a mandate to DOE that is inappropriate at this early, pre-application stage of DOE's licensing activities.

Finally, we would propose to discuss the question of whether staff should offer such documents for OGC review before you issue them.

Please let us know when it would be convenient to meet to discuss the foregoing matters.