

NYE
COUNTY

September 4, 1992

Mr. B.J. Youngblood, Director
Division of High-Level Waste Management
Office of Nuclear Material Safety and
Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Youngblood:

We have reviewed John Roberts' recent letter to you of July 20, 1992, along with DOE's statement on the role of annotated outlines and their relationship to the DOE issues resolution and the NRC/DOE licensing processes. We have also reviewed your letter to Robert Loux that was written in response to the State of Nevada's letters on prelicensing interactions between NRC and DOE.

Nye County has observed with keen interest, but so far has remained silent on, the controversy surrounding DOE's "issue resolution strategy". After reviewing DOE's statement on the annotated outline and its relationship to issues resolution and licensing, I have decided to take this opportunity to add our input to this question.

First, Nye County strongly supports Chairman Selin's recent statements regarding closure and issue resolution. We also strongly support the NRC staff's resisting DOE's attempts to turn the annotated outline process into one of issue closure and issue resolution of technical and other repository licensing related issues. Nye County feels strongly that any issue which could affect repository licensing, other than those strictly of regulatory interpretation, should remain open so they may be fully aired during the formal licensing process and its attendant adjudicatory hearings.

At the same time, Nye County recognizes that DOE's annotated outline process could be beneficial in focusing, organizing, and managing the data and other information which will be necessary to complete an actual license application. In that respect, we support DOE's use of it as a management tool.

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We note, however, that in its statement DOE says, "For the MGDS, it [the AO] should eliminate some of the anticipated problems of continuity when NRC and DOE personnel leave the program during the long period of prelicensing and licensing interactions." If that means that DOE anticipates, or hopes, the NRC staff personnel will "sign off" on various issues during the process of reviewing iterations of the AO, and thus preclude successor NRC staff personnel from raising questions or taking different positions with respect to those issues in future years, then, of course, Nye County would be strongly opposed. We are confident that we mirror NRC staff's views in this respect.

Likewise, the annotated outlines process should not in any way be used as a means of inducing or pressuring the NRC staff into giving DOE "guidance" on how to write a license application, or structure a successful licensing proceeding. That is DOE's responsibility under the NWPA, and it must remain its alone. We thus do not agree with the statement in the DOE document, "The success of the annotated outline initiative to facilitate issue resolution depends on NRC staff guidance for these first-of-a-kind activities." We support the NRC staff's insistence that "guidance" remains strictly a part of the Site Characterization Plan review process.

Nye County does not have a problem if DOE is limiting its strategy, and its use of the AO in this process, to the statement found on page 4 of its document that: "Resolution of licensing related issues with NRC staff means that DOE and NRC have developed a common understanding of the regulations". However, we do not believe that 10 CFR 60 is ambiguous, and thus, there is very little need, if any, for the reduction of "regulatory uncertainty". A level of flexibility in the regulations, and consequently for the exercise of some regulatory discretion, is probably desirable.

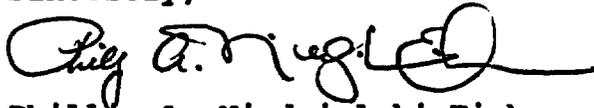
I hope I have made Nye County's position on this issue clear. I know this dialogue will continue and many further exchanges will take place as DOE continues to push its aggressive strategy to resolve regulatory issues and reduce regulatory uncertainty. Nye

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County intends to closely monitor this preliminary strategy and interject our position as that process evolves.

If you or your staff have any questions regarding this letter, please call me at 703-818-2434 or 702-482-8183.

Sincerely,



Phillip A. Niedzielski-Eichner
Acting Program Manager

cc: John Bartlett, OCRWM Director
Carl Gertz, Yucca Mountain Project Program Manager
Nye County Commissioners
William Offutt, County Manager
Malachy Murphy, Regulatory and Licensing Advisor
Elwood Holstein, Jr., Policy and Technical Advisor