



Department of Energy
Washington, DC 20585

APR 7 1993

Mr. Joseph J. Holonich, Director
Repository Licensing and Quality
Assurance Project Directorate
Division of High-Level Waste Management
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Mr. Holonich:

Recently, the U.S. Nuclear Regulatory Commission (NRC) conveyed informally to the U.S. Department of Energy (DOE) concerns on two DOE comments relative to draft revisions to the "Procedural Agreement Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy Identifying Guiding Principles for Interface During Geologic Repository Site Characterization" (hereafter referred to as the Procedural Agreement), and the "Agreement Between the U.S. Department of Energy Office of Civilian Radioactive Waste Management and the U.S. Nuclear Regulatory Commission Division of High-Level Waste Management During Site Characterization Programs and Prior to the Submittal of an Application for Authorization to Construct a Repository" (hereafter referred to as the Repository Project-Specific Agreement). The DOE comments on proposed draft revisions to these agreements were transmitted previously to the NRC via letter dated December 17, 1992 (Roberts to Holonich).

The first NRC concern is relative to new language proposed by DOE to be inserted into the Procedural Agreement, section 2.c., page 2, and the Repository Project-Specific Agreement, Section 2.B., as stated: ". . . as well as to resolve technical issues that have been elevated to upper management. Licensing and management meetings may be a forum for the negotiation of commitments and agreements on the acceptability of actions on the part of both agencies."

The NRC believes that licensing and management meetings are not the forum to address, or resolve, technical issues. Therefore, NRC proposed that new language supplant the DOE language as follows:

Licensing and management meetings may serve as a forum to define a particular technical issue, or to discuss future actions and requirements, by either agency, regarding a technical issue.

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DOE agrees with the NRC-proposed new language, but also requests that an additional sentence be added to the end of the paragraph as follows:

Any commitments that are made during the meeting will be documented into formal correspondence by the party(ies) making the commitments.

The second NRC concern pertains to new language proposed by DOE to be inserted into the Repository Project-Specific Agreement, section 1, paragraph 2 (after the second sentence within that paragraph), page 1, as stated: "In addition, access will be subject to limitations concerning proprietary and privileged information."

The concern in this regard is that NRC believes that its access to, and control of, DOE information (i.e., proprietary and privileged information regarding personnel, etc.) is addressed in 10 CFR Part 9.17 and should be so stated. By omitting reference to the specific regulatory requirement within the agreement, NRC believes that the DOE proposed language may give the perception that DOE is withholding important information from the NRC and/or the State of Nevada. Therefore, NRC proposed that new language replace the DOE-proposed sentence as follows:

DOE will identify, at the time it makes information available to NRC, any records which it considers exempt from public disclosure under the Freedom of Information Act. The NRC will withhold such information from public disclosure to the extent stated in 10 CFR Part 9.17. Records as used above are defined as all records that would be generally relevant to a potential licensing decision by the Commission, but shall not include opinions of counsel.

(Underlined language represents original text from the existing agreement.)

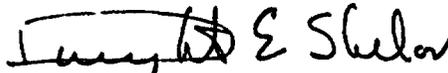
Primarily, DOE agrees with the NRC-proposed new language, but requests that the paragraph include two additional clauses (as underlined) and delete the last portion of the last sentence (as bracketed) of the NRC-proposed paragraph as follows:

DOE will identify, at the time it makes information available to NRC, any records which it considers exempt from public disclosure under the Freedom of Information Act. The NRC, following consultation with DOE, will withhold such information from public disclosure to the extent permitted in 10 CFR Part 9. Records as used above are defined as all records that would be generally relevant to a potential licensing decision by the Commission. [but shall not include opinions of counsel]

The DOE rationale for changing the reference to the NRC Freedom of Information Act regulations from 10 CFR Part 9.17 to 10 CFR Part 9 is that provisions in sections other than Part 9.17 may be relevant such as 10 CFR Part 9.25(d) which states: "If a requested record that is located is one of another Government agency or deals with subject matter over which an agency other than the NRC has exclusive or primary responsibility, the NRC shall promptly refer the record to that Government agency for disposition or for guidance regarding disposition." Also, the DOE rationale for deleting ". . . but shall not include opinions of counsel." is because this statement is redundant in that 10 CFR Part 9.17(a) (5) incorporates language which covers this exemption.

Should you have any questions in this regard, please contact Sharon Skuchko of my office at (202) 586-4590.

Sincerely,



Dwight E. Shelor
Associate Director for
Systems and Compliance
Office of Civilian Radioactive
Waste Management

cc:

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