



Department of Energy
Washington, DC 20585

MAY 19 1993

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

Dear Mr. Holonich:

This is in response to your transmittal of April 7, 1993, concerning the U.S. Nuclear Regulatory Commission (NRC) "Topical Report Review Position Paper." We have reviewed the position paper and discussed it with NRC staff at the May 3, 1993, management meeting.

In general, we are very pleased with the position paper and believe it will be useful in guiding the preparation of future Department of Energy (DOE) topical reports concerning the geologic repository project. While most of our questions were answered during the meeting a few more came up during a post-meeting discussion among DOE staff and contractors. We have enclosed those comments and questions for your consideration.

One other matter came up during the meeting on which we would like to state the DOE position and that is, whether the NRC staff can or should issue safety evaluations (SEs). The DOE understands that the NRC safety evaluation (SE) represents only the NRC staff position on a given topic, and that the SE does not represent a "final" NRC decision, does not bind the Commission or the licensing board and does not preclude any party from raising the topic as a contention in the NRC licensing proceeding. The DOE further understands that the NRC staff can appropriately set conditions on the SE to limit its application.

If you have any questions, please contact Linda J. Desell of my staff at (202) 586-1462.

Sincerely,

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

Enclosure

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cc (w/encl)

L. Smith, YMPO
C. Gertz, YMPO
T. J. Hickey, Nevada Legislative Committee
R. Loux, State of Nevada
D. Bechtel, Las Vegas, NV
Eureka County, NV
Lander County, Battle Mountain, NV
P. Niedzielski-Eichner, Nye County, NV
W. Offutt, Nye County, NV
C. Schank, Churchill County, NV
F. Mariani, White Pine County, NV
V. Poe, Mineral County, NV
J. Pitts, Lincoln County, NV
J. Hayes, Esmeralda County, NV
B. Mettam, Inyo County, CA

ENCLOSURE

DOE COMMENTS ON NRC "DIVISION OF HIGH-LEVEL WASTE MANAGEMENT TOPICAL REPORT REVIEW POSITION PAPER"

The DOE comments correspond to the appropriate sections of the NRC Position Paper.

1.0 INTRODUCTION

The Department of Energy (DOE) is pleased that the Nuclear Regulatory Commission (NRC) staff has chosen to follow the historical path of using topical reports to review subjects important-to-safety. DOE believes that the NRC staff extension of this process to apply to particular technical issues at a specific repository site is consistent with the Commission's stated policy in the footnote to 10 CFR 60.18 to "allow early identification of potential licensing issues for timely resolution."

Further, DOE agrees that a safety evaluation (SE), as a review product for a topical report, is not a final determination regarding any particular licensing issue and that "the NRC staff will still need to evaluate the use of the topical report in the LA to determine if DOE has acceptably demonstrated compliance with 10 CFR Part 60." This is consistent with 10 CFR 60.18(1) which states, in part, "neither the issuance of a site characterization analysis nor any other comments of the Director made under this section constitutes a commitment to issue any authorization or license or in any way affect the authority of the Commission, the Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards, other presiding officers, or the Director, in any proceeding."

Topical reports will contain the current DOE state of knowledge on particular matters. DOE recognizes that NRC staff review of topical reports and issuance of SEs reflects the current NRC staff position on the subject matter of a particular topical report, including resolution of the NRC staff concerns in how DOE proposes to meet regulatory requirements appropriate to the subject matter of that topical report.

The DOE understands that a license will not be obtained by demonstrating compliance with the regulation a section at a time but by demonstrating that a geologic repository, as an integrated system, is and will remain in compliance with 10 CFR Part 60. The DOE seeks to use the topical report process to allow NRC staff to review and comment on the acceptability of the materials presented in the topical reports for inclusion in an LA. We believe that DOE may draw conclusions from site characterization work in a topical report and take the position that the technical

basis presented in a topical report demonstrates compliance with a particular section of 10 CFR Part 60. NRC staff should be free to make a statement that DOE has demonstrated compliance with applicable NRC regulatory requirements, recognizing that any such statement is not final and that any given topic must be evaluated as a part of the integrated repository system in a potential license application.

2.0 PURPOSE OF REVIEW

The evaluation criteria listed in section 2.0 are not stated in exactly the same manner as the acceptance review criteria stated in section 5.1, however, the slightly different statements appear to be entirely consistent. DOE feels that this section or Section 2.0 provides a clear statement of the purpose of a topical report.

The DOE understands that the time frame provided in the legislation for review of a license application (LA) is very short and will cooperate to the extent possible to identify and resolve licensing issues using the guidance in this topical report position paper. The Site Characterization Progress Report will note the development of topical reports, while correspondence will be used to keep NRC staff apprised of developments between issuance of Progress Reports.

3.0 PROCESS FOR SUBMITTAL OF TOPICAL REPORTS

DOE understands and agrees with the process as stated in the text of section 3.0. The process is clearly stated and we have only one question of clarification regarding time, as in section 3.1 below.

3.1 Procedure for Submittal

When DOE informs NRC staff of the scope and description of a topical report and requests a determination whether or not such a topical report may be submitted for review, what process will be used and how long will NRC staff need to make that determination? DOE feels that 30 days would be appropriate for such a determination, similar to the time period used for study plan acceptance review determinations, with the flexibility for a shorter time period, if justified.

3.2 Report Identification

In this section NRC staff indicates how the topical reports in their various possible versions are to be given identifying symbols. As a point of information, DOE has checked the numbering requirements of our printing personnel and the system suggested by NRC staff in this section is not a problem.

4.0 CONTENTS OF REPORT

DOE understands and agrees with the process as stated in the text of section 4.0. The process is clearly stated and we see no reasons for changes or comment.

4.4 References

With respect to section 4.4, DOE will have references available at the time of transmittal of the topical report to the NRC staff. We appreciate NRC staff understanding that some data may be presented for the first time in or in conjunction (i.e. as a reference) with submittal of a topical report.

5.0 STAFF REVIEW

DOE understands and agrees with the process as stated in the text of section 5.0. The process is clearly stated and we see no reasons for changes or comment with the exception of a possible clarification in section 5.1, as stated in our observations on section 2.0.

5.1 Acceptance Review

NRC staff may want to clarify in either this section or the Appendix that the time period for acceptance review is included in the six week period between DOE submittal of a topical report and NRC staff preparation of questions.

APPENDIX

Please see comment on section 5.1 above.

OTHER COMMENTS ARISING AT THE MAY 3, 1993 MEETING

DOE has no objection to making a standard statement in all topical reports with respect to their purpose and their non-binding nature. However, any such statement should clarify what a topical report is, as well as, what it is not.