



CHAIRMAN

UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

November 15, 1990

Dr. Don U. Deere  
Chairman  
U.S. Nuclear Waste Technical Review Board  
1100 Wilson Boulevard, Suite 910  
Arlington, Virginia 22209

Dear Dr. Deere:

I am writing in response to your September 28, 1990 letter in which you suggested that the Environmental Protection Agency (EPA) and the Nuclear Regulatory Commission (NRC) enter into a negotiated rulemaking regarding EPA's standards in 40 CFR Part 191 and NRC's requirements in 10 CFR Part 60 for high-level radioactive waste (HLW) disposal. Based on your conversations with Mr. Robert Bernero of the NRC staff and those between Dr. Melvin Carter and my fellow Commissioners, we understand that the intent of the Board's proposal for a negotiated rulemaking was to foster a more open and productive exchange on the issues rather than to necessarily initiate a formal negotiated rulemaking. We agree with you that both agencies should endeavor to ensure that, taken together, the generally applicable environmental standard established by EPA and NRC's implementing regulations form a coherent, consistent, and workable regulatory framework within which repository licensing decisions can be made.

Although we appreciate your suggestion and understand the reasons behind it, we are concerned that formal negotiated rulemaking may not hold sufficient promise of fostering the broad consensus you seek. For a formal negotiated rulemaking to be successful, the issues for negotiation must be relatively clear, and all parties to the proceeding (not just the two government agencies) must be willing to negotiate and believe that a negotiated agreement will provide a better solution to the issues than a rule developed under traditional processes. With regard to EPA and NRC requirements for HLW disposal, that does not yet appear to be the case. Moreover, we believe it is premature to revisit Part 60 until EPA has indicated the extent to which it intends to substantively change 40 CFR 191 in response to the Court's remand. For these reasons, we have no plans to initiate a negotiated rulemaking regarding 10 CFR Part 60 and 40 CFR Part 191 at this time.

We note with interest that EPA, in its response to your proposal, indicates an intent to ascertain the willingness of the potentially interested parties to participate in such a rulemaking. The NRC remains strongly committed to working with EPA as it revises its standards and to fostering an open exchange

Originated RBernero, NMSS

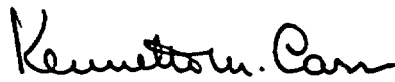
9011280328 901115  
PDR WASTE PDC  
WM-1

*Delete all dist. except CF, RDR,  
NUDOCS-FT & ACNW*

407  
WU-1  
NH16

of views by all interested parties. Once EPA completes its standards, the NRC welcomes and intends to solicit input from all interested parties as we revise NRC requirements in Part 60 to conform to the EPA standard. We look forward to your participation in these interactions as well as to continued cooperation between the Nuclear Waste Technical Review Board and the NRC.

Sincerely,



Kenneth M. Carr

cc: The Honorable William K. Reilly, EPA  
Dr. John W. Bartlett, DOE

Distribution:

Taylor	<u>LSS</u>
Snizek	JLinehan
Thompson	JBunting
Blaha	JHolonich
EDO 5866	CNWRA
EDO R/F	CJenkins
ACNW	NMSS R/F
RBallard	RBrowning
EBeckjord	On-Site Reps
KKalman	JScinto
BJYoungblood	
LAltoft	
HLPD R/F	