

June 28, 1995

0408

Mr. Ronald A. Milner, Director
for Program Management and Integration
Office of Civilian Radioactive Waste Management
U.S. Department of Energy, RW 30
1000 Independence Avenue, S.W.
Washington, D.C. 20585

SUBJECT: MINUTES OF THE APRIL 11, 1995, BI-MONTHLY MANAGEMENT MEETING

Dear Mr. Milner:

Enclosed are the minutes of the April 11, 1995, bi-monthly management meeting between the staff of the Nuclear Regulatory Commission and representatives of the U.S. Department of Energy (DOE) which was held at NRC headquarters in Rockville, Maryland. The meeting was also attended by representatives of the State of Nevada, the United States Nuclear Waste Technical Review Board and the National Council of American Indians.

At this meeting, NRC agreed to draft some type of documentation describing the License Application Annotated Outline (AO) review process which will include DOE submitting the AO in appropriate sections and the NRC providing a precicensing evaluation report. DOE was requested to provide a letter to NRC describing the change in QA verification activities arising from the integration of DOE's National Laboratories under the M&O. After discussing the results of its first In-Field Verification (IFV), NRC noted that protocols will be developed for IFVs and the State of Nevada will be asked to participate in the development of these protocols.

If you have any questions regarding this letter, please contact Pauline Brooks of my staff. Ms. Brooks can be reached at (301) 415-6604.

Sincerely,

Original Signed By John Thoma

for Joseph Holonich, Chief
High-Level Waste and Uranium Recovery
Projects Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

cc: See attached list

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NAME	PBrooks	JThoma		JHolonich				
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CC LIST FOR LETTER TO R. MILNER DATED June 26, 1995.

cc: R. Loux, State of Nevada
J. Meder, Nevada Legislative Counsel Bureau
W. Barnes, YMPO
C. Einberg, DOE/Washington, DC
M. Murphy, Nye County, NV
M. Baughman, Lincoln County, NV
D. Bechtel, Clark County, NV
D. Weigel, GAO
P. Niedzielski-Eichner, Nye County, NV
B. Mettam, Inyo County, CA
V. Poe, Mineral County, NV
W. Cameron, White Pine County, NV
R. Williams, Lander County, NV
L. Fiorenzi, Eureka County, NV
J. Hoffman, Esmeralda County, NV
C. Schank, Churchill County, NV
L. Bradshaw, Nye County, NV
W. Barnard, NWTRB
R. Holden, NCAI
A. Melendez, NIEC
S. Brocoum, YMPO
R. Arnold, Pahrump, NV
M. Stellavato, Nye County, NV

MINUTES

U.S. NUCLEAR REGULATORY COMMISSION/U.S. DEPARTMENT OF ENERGY

BI-MONTHLY MANAGEMENT MEETING

APRIL 11, 1995

On April 11, 1995, staff from the U.S. Nuclear Regulatory Commission met with representatives of the U.S. Department of Energy (DOE), Office of Civilian Radioactive Waste Management (OCRWM) for a bi-monthly management meeting. The meeting was held at NRC headquarters in Rockville, Maryland. These management meetings provide an opportunity for items of mutual concern in the high-level waste program to be discussed by NRC and DOE management in an open public forum. Attendees represented the NRC, OCRWM, United States Nuclear Waste Technical Review Board, NRC and DOE contractors, the State of Nevada, and the National Council of American Indians. The Affected Units of Local Government were notified of the meeting but did not attend. Attachment 1 lists the attendees.

DOE began the meeting by discussing the status of its multi-purpose canister (MPC) program, which targets 1998 for completion of regulatory reviews. Attachment 2 provides DOE's schedule for submitting key MPC reports to the NRC. The program is currently on track and contracts are expected to be awarded by the end of April 1995. DOE applauded NRC efforts to establish the Spent Fuel Program Office to support this important DOE initiative. DOE has defined three developmental stages for storage and transport aspects of the MPC: (1) conceptual design and safety analysis, (2) certification, and (3) fabrication of a 2-year supply of canisters. The conceptual design stage for the MPC, from which specifications will be developed, has been completed. In May 1995, DOE plans to submit a topical report describing their burn-up credit procedures for storage and transportation. In the spring of 1996, DOE will submit a MPC technical report describing the disposal aspects of the MPC. Concurrent with obtaining certification under Parts 71 and 72 for transportation and storage respectively, DOE would like to receive comments from the NRC concerning the disposal aspect of the MPC. 10 CFR Part 60 does not specifically address certification of a waste form separate from the engineering barrier system. Therefore, DOE's objective is not to seek certification from the NRC concerning disposal aspects of the MPC. Rather DOE's objective is to seek NRC comments on disposal aspects of the MPC at an early stage in order to better manage the risks of MPC development. NRC expressed a strong desire to receive the MPC disposal information as part of the Annotated Outline and not in a separate technical report. DOE and NRC agreed that additional discussion is needed about MPCs and their compatibility with the Yucca Mountain environment. A technical exchange on MPCs may be needed in the future.

DOE also reported that scoping of the Environmental Impact Statement for transportation and storage aspects of the MPC was completed on January 6, 1995, and over 2000 comments were received.

NRC then explained the proposed functions of its newly established Spent Fuel Program Office, which will review storage and transportation aspects of the MPC. This office will not do a Part 60 review concerning disposal aspects of the MPC, but rather will interface with the Division of Waste Management which is responsible for disposal issues. A representative of the Spent Fuel Program Office will attend, as appropriate, these management meetings with DOE.

DOE then discussed their spent fuel program, particularly as it related to the management of spent Naval nuclear reactor fuel and some foreign spent fuel obtained through international agreements. DOE currently estimates that as much as 10% of the repository could consist of spent fuel of a unique nature. DOE is still investigating their options and plans three reports on spent fuel: an inventory of spent fuel, the management of spent fuel, and environmental impact studies of spent fuel. Although the primary purpose of this presentation was to inform the NRC of DOE's current plans for spent fuel management, there was general agreement that this topic may require further technical interactions between the NRC and DOE at some future date.

The next discussion involved the submittal of information related to licensing of a disposal site by DOE. In response to the discussion at the management meeting on February 8, 1995, DOE discussed the role of licensing documentation designed to meet statutory and regulatory requirements; to provide site characterization information to oversight organizations; to assist in issue resolution; and to prepare for submitting a license application. Specific proposed improvements in the Site Characterization Progress Reports and the role and schedule for iterations of the License Application Annotated Outline (AO) and topical reports were presented. Attachment 3 provides DOE's current priority list for submitting documents related to Yucca Mountain. DOE announced that Site Characterization Plan Progress Report Number 11 was accompanied by a list of not-readily available references which DOE will make available to the NRC upon request. As a partial response to previous NRC requests, Progress Report 12 will contain a matrix comparing the Site Characterization Plan and the Program Approach. NRC emphasized the need to receive timely information from DOE in order for NRC to provide real-time feedback on DOE's activities. DOE also discussed the planned submittal of topical reports (refer to Attachment 4 for the proposed schedule). NRC prefers that technical issues be resolved by inclusion in the AO to the maximum extent possible.

With regard to issue resolution, DOE proposed that it would prepare Site Characterization Analysis open item supplemental responses either quarterly or semiannually but would also like to retain the capability to provide individual responses as appropriate. NRC indicated they would be responsive to this request but suggested one way to document issue resolution was to include the resolution in the AO. NRC plans to provide

prelicensing evaluation reports (PERs) to document their review of the AO. A general discussion occurred on how to achieve these objectives. One approach discussed by DOE was that DOE could submit sections of the AO when they were prepared and perhaps submit an annual update which contains all of the sections submitted during the year. Then the NRC would be reviewing the most up-to-date information. The NRC staff indicated that such an approach would be acceptable to them. DOE requested that some type of procedure be developed in writing describing the AO submittal and review process. NRC replied that some type of document could be developed similar to the level of detail agreement on study plans and NRC would take the initiative to develop this document. In response to a concern expressed by the State of Nevada, it was reiterated that resolution of an issue at the staff level during the prelicensing consultation period would not preclude the issue from being raised and considered during the licensing proceedings.

NRC staff then made the next presentation on its vertical slice approach to reviewing DOE's Program Approach for consistency with licensing requirements. The slides used for this presentation are contained in Attachment 5. The vertical slice approach allows the staff to focus prelicensing reviews on key technical issues (KTIs) identified by the NRC staff related to DOE's high-level findings for repository licensing, Exploratory Studies Facility (ESF) design and MPC disposal issues. This approach is important for early identification and resolution of issues regarding data collection and for providing an integrated review of the most complex licensing issues consistent with DOE's schedule. Letters and reports related to temporary on-site representative's site visits, Appendix 7 visits, audit activities, or in-field verifications are all vehicles to document NRC comments in the area reviewed. In addition, NRC plans to produce a summary report of the vertical slice for each KTI in order to document overall NRC conclusions about the adequacy of DOE's program to support licensing. Iterative performance assessments will be conducted on the total system as a means of evaluating the importance of issues not captured in the KTIs. The vertical slice plans are an audit approach to be used for prelicensing consultation. During the actual licensing process, all areas of the license application will be reviewed to some extent.

Next DOE discussed a change to its quality assurance (QA) program. Previously there has been some redundancy in the area of QA verification (audits/surveillance). In an effort to eliminate redundancy, save costs, and still meet regulatory requirements, DOE reported at a previous DOE/NRC QA meeting that it was transitioning the entire QA audit function to the DOE Office of Quality Assurance (OQA). Previously DOE OQA would audit its affected organizations and the affected organizations would audit their vendors. Now OQA will perform all audit functions. Surveillances, as needed, would be performed by DOE and affected organizations. NRC staff were interested how any of this change may be affected by the effort to integrate the Management and Operating contractor (M&O) and the National Laboratories. DOE was requested to provide a letter to the NRC documenting the change to the QA program and the effect of the contractor reorganization as it relates to QA rather

than to rely on previous QA meeting minutes to convey this information.

NRC reported on its in-field verification of DOE activities which was conducted during the first week of April and resulted in five open items. Two items were closed before the team left the site and three issues remain as open items. Based on lessons learned from this activity, protocols are being developed for future in-field verifications. The State of Nevada will be invited to participate in developing these protocols.

NRC's letter on alleged harassment and intimidation (H&I) at Yucca Mountain was issued on April 10, 1995. It describes NRC's role in dealing with allegations regarding such H&I and forwards several such H&I allegations received by NRC. Basically, DOE has the lead in responding to H&I issues and NRC will periodically monitor the DOE activities.

NRC noted that a DOE contractor has raised questions concerning criticality issues with special fissile materials to be disposed by DOE. These questions have been the subject of media interest. The NRC has named an ad hoc team lead by Mike Bell, Chief, Engineering & Geosciences Branch to respond to these concerns and requested OCWRM's plans for responding to these concerns. DOE responded that criticality issues will be addressed in the Annotated Outline, the MPC documentation, the burn-up study report, and as part of on-going natural analogue evaluations. DOE believes it is premature to draw conclusions about the consequences of a particular waste form for this special nuclear material because no decision on a specific waste form has been made. Various options for disposition of this special nuclear material are being evaluated: commingling; mixing with glass, mixed oxides, deep burial, etc. The issue will be discussed in the planned topical report on criticality issues. Therefore, DOE believes a process to evaluate criticality is currently in place and DOE does not need a specific program to address the issues of current media interest. When NRC has specific concerns involving long term disposal and criticality issues, it will so advise DOE. A technical exchange to discuss long-term criticality issues will be proposed for the next 6 months.

NRC is following DOE's formal elicitation of expert judgment process with great interest and will provide comments as appropriate. The staff continues to be concerned that appropriate and uniform criteria for formal use of expert judgment are applied throughout the OCRWM project. These criteria should avoid conflict of interest, minimize bias, and ensure a full range of views is represented and that complete information is provided equally to participants. Based on NRC observations of the DOE expert elicitation process to date, NRC management raised two concerns about the process at this meeting: (1) that biases be minimized, especially institutional biases, and (2) that all experts should be provided with all relevant background material. The NRC staff plans to issue draft guidance on expert elicitation for public comment in the fall of 1995.

Other topics briefly discussed during the closing portion of the meeting included the following. NRC stated that the 90-day comment period for the proposed Design Basis Events rulemaking, which was published on March 22, 1995, would end on June 19, 1995. It was noted that Site Characterization Analysis Open Items are still important to NRC. NRC notified DOE that it does not intend to review Study Plans as independent documents except in special circumstances. NRC will review Study Plans as part of site visits, in-field verifications, topical report reviews and other activities related to vertical slice plans and provide appropriate comments to DOE. In addition, NRC staff noted that some Study Plans, including some which were recently submitted, do not appear to be in agreement with the current DOE Program Approach and need updating. DOE said that they wanted to think about NRC comments and would respond at a later date.

In closing remarks, the State of Nevada stated that further discussion is needed about whether Navy spent fuel should be included in the current MPC program. The State objects to including Navy and DOE spent fuel in an OCWRM program which the State feels should be devoted to the disposal of commercial spent fuel. The representative of the National Council of American Indians had no closing remarks.

After agreeing that the next bi-monthly management meeting is scheduled for June 2, 1995 at 1PM EDT at DOE headquarters, the meeting was adjourned.

Pauline P. Brooks
Pauline P. Brooks
High-Level Waste and Uranium
Recovery Projects Branch
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards
U.S. Nuclear Regulatory Commission

Priscilla Bunton
Priscilla Bunton
Regulatory Integration
Division
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy

NRC-DOE MANAGEMENT MEETING ATTENDANCE LIST
April 11, 1995

Room T6-A1, Two White Flint North
Rockville, Maryland

PRINTED NAME	ORGANIZATION/COMPANY	PHONE
Mark Delligatti	NRC/NMSS/DWM/HLUR	301-415-6620
John L. Russell	CNWRA	703-416-1129
Pauline Brooks	NRC/NMSS/DWM/HLUR	301-415-6604
Robert Hartstern	DOE/EM-33 (MACTEC)	301-353-9444
S.E. LeRoy	CRWMS (M&O)	702-794-7836
Steve Nesbit	CRWMS (M&O)	702-794-1910
Jim Linhart	DOE/EM-37 (LITCO)	301-903-1262
April V. Gil	DOE/YMP/AMSL	702-794-7622
Joe Holonich	NRC/NMSS/DWM/HLUR	301-415-7238
Michael Bell	NRC/NMSS/DWM/ENGB	301-415-7286
Sher Bahadur	NRC/RES/DRA	301-415-6227
James M. Carlson	DOE/OCRWM	202-586-5321
Lake Barrett	DOE/RW	202-586-6850
John H. Austin	NRC/DWM/PAHB	301-415-7252
Alan Brownstein	DOE/RW	202-586-4973
John Greeves	NRC/DWM	301-415-6708
Margaret Federline	NRC/DWM	301-415-6637
L.J. Hopkins	NCAI	202-546-9404
Jeff Williams	DOE/RW	202-586-9620
David F. Fenster	M&O/WCFS	703-204-8866
Dan Fehringer	NWTRB	703-235-4473

NRC-DOE MANAGEMENT MEETING ATTENDANCE LIST

April 11, 1995

Room T6-A1, Two White Flint North
Rockville, Maryland

PRINTED NAME	ORGANIZATION/COMPANY	PHONE
Ken Baskin	M&O Consultant	703-264-8527
David Brooks	NRC/NMSS/DWM/PAHB	301-415-7284
Sue Gagner	NRC/OPA	301-415-8202
Carol Hanlon	DOE/YMSCO	702-655-0287
Fritz Sturz	NRC/NMSS/STSB	301-415-7278
Donald G. Horton	DOE/OQA	702-794-7675
John O. Thoma	NRC/NMSS/DWM/HLUR	301-415-7293
Bob Gamble	M&O	702-295-9663
Chris Einberg	DOE/HQ RW-36	202-586-8869
Keith McConnell	NRC/OCM-IS	301-415-1750
Norman T. Simms	M&O	702-794-7314
Paul M. Krishna	M&O/TRW	202-488-2303
Heather A. McAleer	Scientech, Inc.	301-468-6425
James T. Conway	DOE/EM-33	301-903-7450
Sidney L. Crawford	DOE-EM (SAIC)	301-601-5642
Priscilla Bunton	DOE	202-586-8365
Jim York	Weston	202-646-6650
William Travers	NRC/NMSS	301-415-5478
Steve Frishman	NV NWPO	702-687-3744
Judy Trischel	NV NWTF	702-248-1127

DOE/NRC Management Meeting

DOE/HQ Document Submittal Priority List

April 11, 1995

DOE/HQ PRIORITY LIST

- o Applications for certification of GA-4 and GA-9 transport casks (submittals in August 1994 and July 1994, respectively)
- o Response to DOE Petition for Rulemaking (12/93) to Exempt High-Level Vitrified Waste Canisters from 10 CFR 71.63(b) Requirements
- o Interactions with NRC to clarify scope, content, and purpose of "MPC Part 60 Considerations Report"

UPCOMING DOE/HQ PRIORITY SUBMITTALS

- o Burnup credit topical report for storage and transportation
(May 1995)
- o Multipurpose canister Safety Analysis Report
(Spring 1996)

YUCCA
MOUNTAIN
PROJECT

Studies

DOE-NRC Management Meeting

DOE Document Submittal Priority List

Presented by:
April V. Gil
Licensing Team Leader
Assistant Manager for Suitability and Licensing
Yucca Mountain Site Characterization Office



U.S. Department of Energy
Office of Civilian Radioactive
Waste Management

April 11, 1995

DOE/YMSCO Priority List

- **Study Plans:**
 - 1) 8.3.1.2.2.6, Rev. 1, "Characterization of gas phase movement in the unsaturated zone"
 - 2) 8.3.1.3.5.1/2, "Dissolved species concentration limits and colloid behavior"
- **License Application Annotated Outline (March 1995)**
- **Erosion Topical Report Supplemental Responses (April 1995)**
- **Response to NRC's October 6, 1994 Letter on Pneumatic Pathways (March 31, 1995)**

Upcoming Priority Submittals

- **Study Plan 8.3.1.17.3.6, "Probabilistic Seismic Hazards Analyses" (April 1995)**
- **Seismic Topical Report II - Seismic Design Methodology for Yucca Mountain (August 1995)**
- **External Review for Design Package 1E - auxiliary power generators (May 1995)**

YUCCA MOUNTAIN PROJECT

Studies

DOE-NRC Management Meeting

Licensing Documentation

Presented by:
April V. Gil
Licensing Team Leader
Assistant Manager for Suitability and Licensing
Yucca Mountain Site Characterization Office



U.S. Department of Energy
Office of Civilian Radioactive
Waste Management

April 11, 1995

Purpose

- **To meet statutory and regulatory requirements**
- **To provide site characterization information to oversight organizations**
- **To assist in issue resolution**
- **To prepare for the submittal of a license application**

Types of Documentation

- **Site characterization progress reports**
- **License application annotated outline**
- **Topical reports**
- **Technical reports**
- **Other**

Progress Reports

- **Required by Nuclear Waste Policy Act and 10 CFR Part 60**
- **Produced every six months**
- **Provides summary of project activities over six month period**
- **Content and organization of reports continues to improve**

Site Characterization Progress Report 11

- **Improved Focus**
- **Revised Outline**
- **Emphasis on Substance and Impact**
- **Additional Appendices**
- **Treatment of References**

Site Characterization Progress Report 12

- **More substantive detailed treatment of design and performance assessment chapters**
- **Matrix comparison of studies/activities described in Site Characterization Plan with Program Approach**
 - **Rationale for terminating, initiating, deferring study/activity**

Responses to NRC Requests

- **Program Approach**
 - Chapters 1, 2, Appendix A
- **Site Characterization Analysis Open Items**
 - Chapter 2, Appendix C
 - **Proposal to include supplemental responses in separate semiannual report**

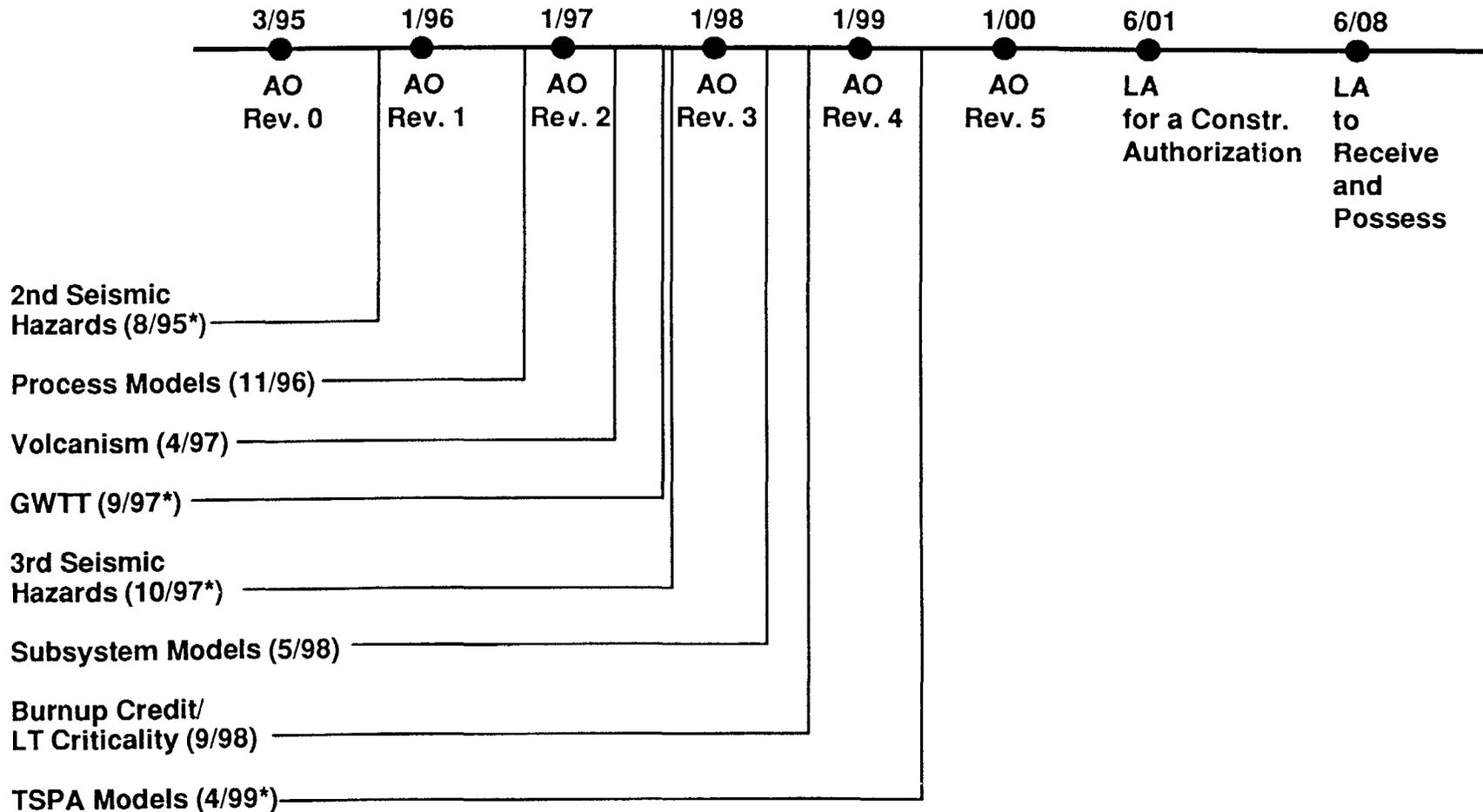
License Application Annotated Outline

- **Vehicle for development of a complete and sufficient license application**
- **Updated on an annual basis (or sections revised, as appropriate)**
- **Process will require thorough NRC review with provision of substantive comments**
- **Potential for effective utilization for issue resolution**
 - **Need provision for resolution of NRC concerns at a staff level, similar to Staff Evaluation of a Topical Report**

Topical Reports

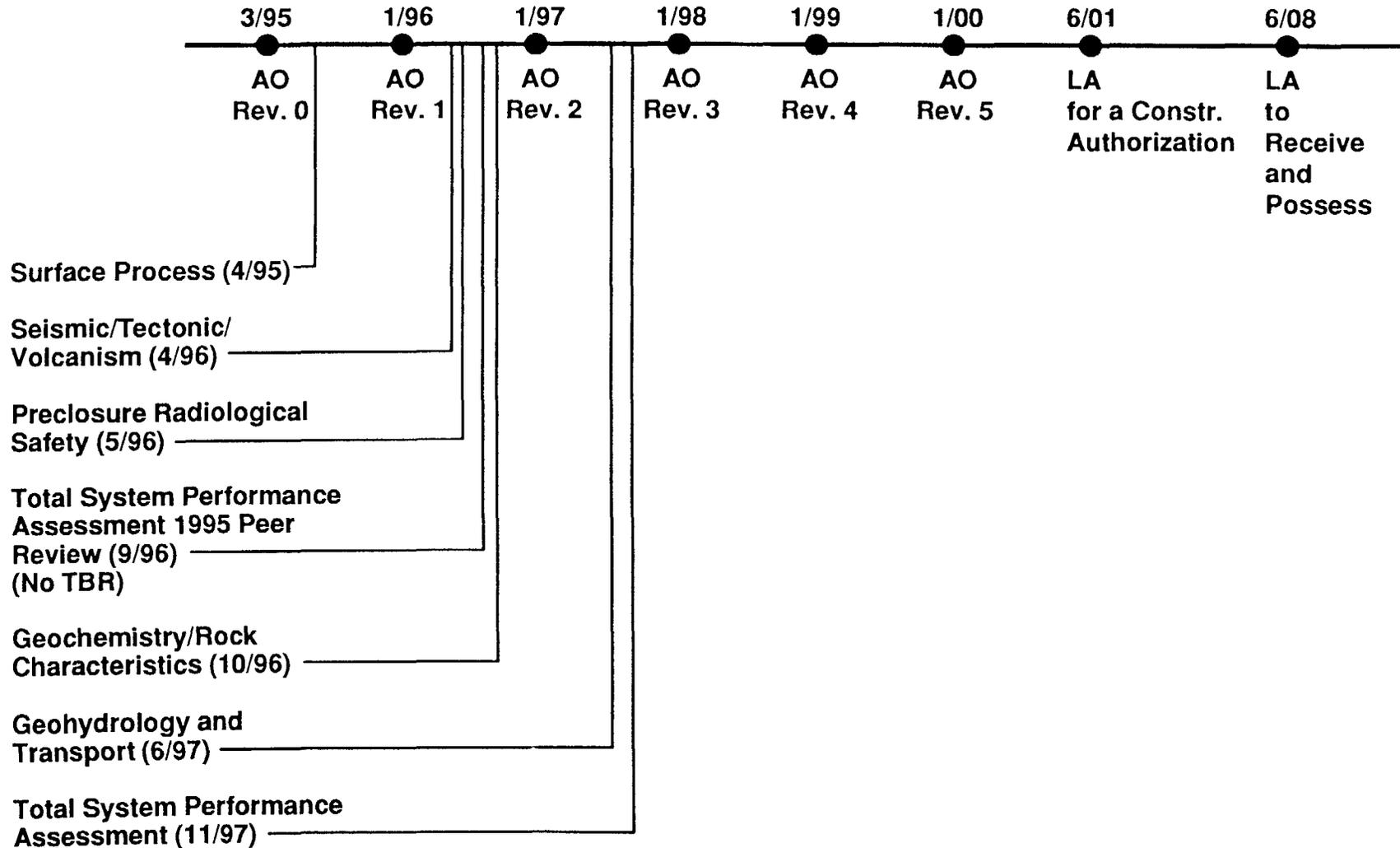
- **Report on an area of regulatory and, generally, technical interest**
- **Reviewed in accordance with the Topical Report Review Plan (NRC Office of Nuclear Material Safety and Safeguards Division of Waste Management)**
- **Intended to result in NRC finding of resolution of staff concerns related to a methodology or a specific requirement**
- **Successful track record in nuclear power plant regulation**
- **Important vehicle for issue resolution - see schedule**

License Application and Topical Reports



* Revised from Program Plan

License Application and Suitability Reports



Technical Reports

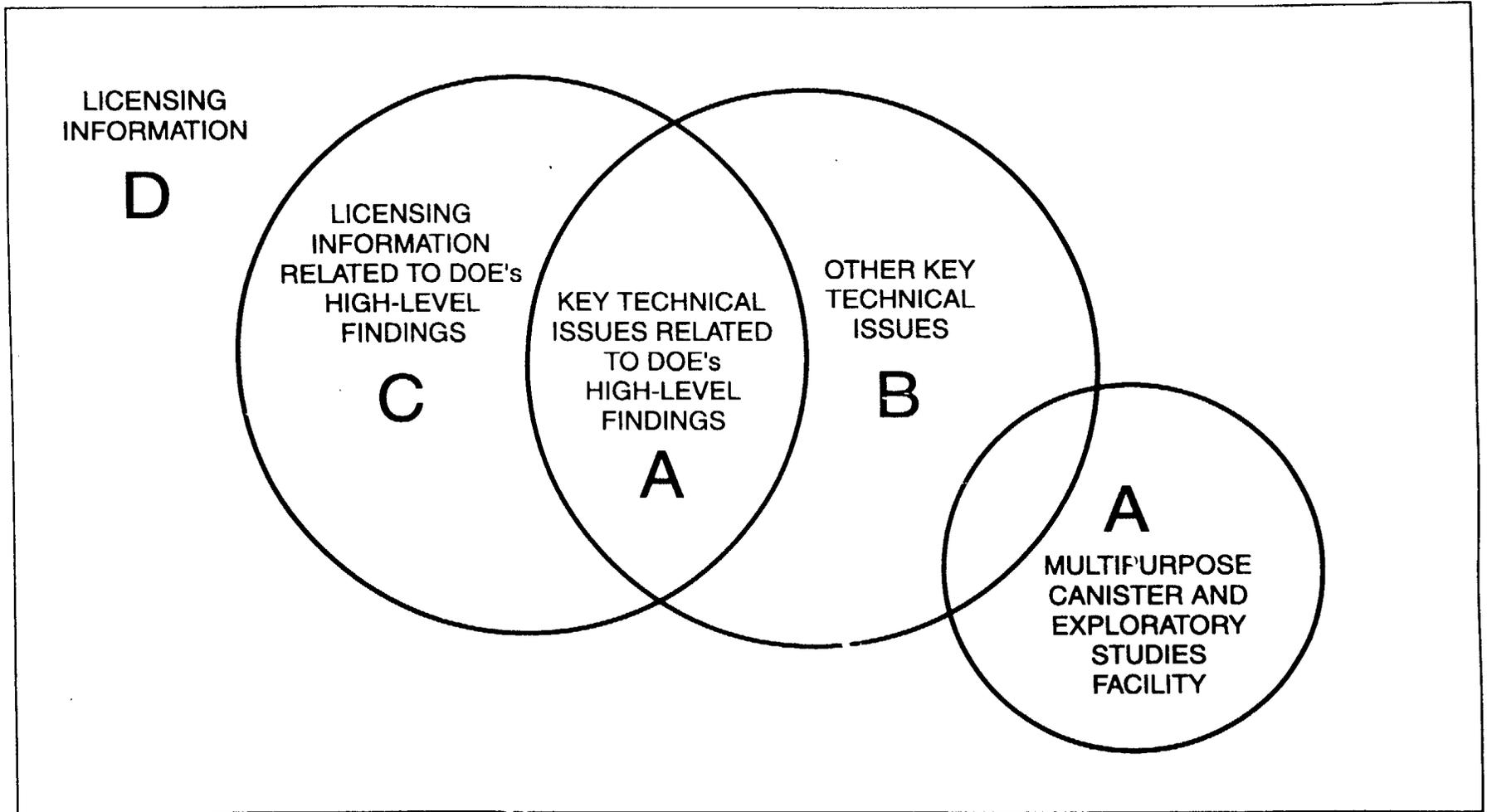
- **Provide information about a specific technical area**
- **Not handled in accordance with the Topical Report Review Plan**
- **Can be used to assist in issue resolution**

Summary

- **DOE-NRC pre-licensing interactions involve different types of documentation, with various purposes**
- **Issue resolution and license application development will require effective use of and review of regulatory documentation**
- **DOE and NRC must work toward documented resolution of issues at a staff level, regardless of the type of document being reviewed**

NRC Strategy to Review Implementation of Program Approach

KEY TECHNICAL ISSUES



WHAT IS THE VERTICAL SLICE APPROACH?

- **Focus prelicensing reviews on key technical issues for licensing, ESF design, and MPC disposal issues**
- **Conduct QA activities, in-field verifications and Appendix 7 site visits to obtain real-time information**
- **Focus research and technical assessment method development on key technical issues**
- **Develop necessary review plans and guidance for key technical issues in a time frame consistent with DOE's site suitability decision and license application**
- **Conduct iterative performance assessment on the total system to confirm focus on key technical issues**

VERTICAL SLICE APPROACH OBJECTIVES

- Provide indepth, integrated review of the most complex licensing issues in a time frame consistent with DOE's schedule**
- Provide real-time feedback to DOE in the face of an accelerated program**
- Efficiently evaluate DOE's program approach as it relates to licensing**
- Facilitate integration of NRC proactive and reactive activities**
- Focus prioritization of NRC HLW activities in the face of level or declining budgets**
- Focus research, technical assessments, and prelicensing reviews on key technical issues**



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555-0001

April 10, 1995

Dr. Daniel A. Dreyfus, Director
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, D.C. 20585

SUBJECT: ALLEGED HARASSMENT AND INTIMIDATION

Dear Dr. Dreyfus:

As discussed with your staff in our management meeting on February 8, 1995, the U.S. Nuclear Regulatory Commission has received several allegations regarding harassment and intimidation (H&I) of U.S. Department of Energy (DOE) contractor employees working on the High-Level Waste Program at Yucca Mountain. These allegations have been forwarded to Mr. Donald Horton, DOE Director, Office of Quality Assurance. Mr. Horton will continue to be the DOE point of contact for future interactions regarding the H&I allegations. This letter briefly describes NRC's role with respect to H&I allegations involving DOE's repository program; explains how NRC will respond in the future to such allegations; and requests certain follow-up information from DOE.

This letter is intended to assure that NRC forwards any such allegations and monitors follow-up activities appropriately. Therefore, the letter should not be interpreted as an NRC comment on any aspect of DOE's current program to address H&I allegations (except as specifically discussed in the next paragraph) or DOE's past performance in this important area. We appreciate the constructive and cooperative discussion that your staff provided at the above meeting. We believe the approach described in this letter will help both agencies aggressively deal with any H&I issues that may arise.

At the July 26, 1994, management meeting, DOE discussed its responsive actions with respect to the alleged H&I of inspectors. DOE also provided copies of letters that had been sent to all DOE and contractor employees. These letters informed the employees that DOE would not tolerate H&I of any employee. Further, DOE gave a detailed presentation on its quality concerns program at the February 8, 1995, management meeting. NRC believes that these actions are elements of a reasonable program to address H&I issues. Further, the DOE responsive actions demonstrate an awareness that, to acceptably address H&I, any program must be effectively implemented. Please understand, however, that our purpose in this letter is not to conduct a detailed review of the DOE program.

NRC's Role and Expectations Respecting Allegations of H&I at Yucca Mountain

As you are aware, NRC has only a limited role with respect to allegations of H&I by DOE employees or contractor employees. Subject to certain exceptions

Attachment 6

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SPP.

D. Dreyfus

- 2 -

that are not pertinent to this discussion, NRC regulatory authority is generally limited to the activities of NRC licensees and applicants for NRC licenses. Although DOE may ultimately file an application under 10 CFR Part 60, it is neither an NRC applicant nor an NRC licensee at this time. Therefore, allegations of H&I against DOE or its contractors could not involve a potential violation of NRC regulations because no such regulations apply to DOE at this time. Similarly, no enforcement purpose would generally be served by NRC's investigating H&I allegations against DOE or its contractors because NRC would have no basis to take enforcement action even if such allegations proved to be true.

However, although NRC currently does not have regulatory authority to address issues of H&I, such issues can nonetheless be a subject of concern to NRC. The identification and communication of potential concerns by employees are an important source of information for both DOE and NRC. It is therefore important to maintain an environment that is not only free from H&I, but is perceived as such by the employees of DOE and its contractors. As I am sure you would agree, not to do so would only make the repository licensing process more complicated, if an application were submitted for Yucca Mountain, because of the need to resolve these issues.

NRC has the responsibility to review DOE's conduct of its site characterization program as part of the precicensing consultation activities under 10 CFR 60.18. As part of its review, NRC can request DOE to provide information on site characterization. Information on H&I allegations is relevant because H&I actions taken against an employee may have a chilling effect on other employees in that it might deter them from identifying any safety concerns they may have. Therefore, NRC intends to monitor DOE's handling of H&I allegations relating to site characterization. In addition, NRC intends to request additional information from DOE, as needed, to determine whether such allegations, should they arise in the future, present a basis for NRC to object to DOE's conduct of site characterization activities.

As noted, NRC believes that a quality conscious environment is one in which all employees, including contractor employees, are free (and feel encouraged) to raise concerns for timely resolution and without fear of retaliation, and senior management will be actively and directly involved in addressing allegations of H&I, to ensure they are promptly and fairly resolved. Therefore, if an H&I allegation arises, it is NRC's request that DOE will have the allegation appropriately investigated and a written report prepared, with a copy provided to my office. In addition, NRC requests, in each case, that you will provide us with the actions you plan to take to resolve any situations involving H&I and any chilling effect that may have been created which could discourage other employees from raising concerns; or, if you conclude no actions are needed, the basis for this determination.

NRC Process for Such H&I Allegations

If NRC receives an H&I allegation from a DOE employee or a DOE contractor, NRC will inform the employee that NRC lacks regulatory authority to take any enforcement action based on the allegation. NRC will inform the employee that, if the employee is willing to have his or her identity disclosed to

assist investigation, then NRC will refer the allegation to DOE for an investigation. NRC will also inform the employee that, in most instances, NRC will be obtaining, for its information, DOE reports on employee allegations.

In addition, NRC will inform the DOE employee or DOE contractor employee that he/she may have a personal, individual remedy that he/she may pursue at his/her own election. In particular, NRC will indicate that Section 211 of the Energy Reorganization Act of 1974, as amended, provides a procedure, for any employee of a DOE contractor or subcontractor indemnified by DOE, under Section 170d of the Atomic Energy Act of 1954, to seek a remedy for a violation of Section 211. If the employee believes he or she has been discharged or discriminated against, for engaging in protected activities, the employee may file a complaint with the Department of Labor, Employment Standards Administration, Wage and Hour Division, within 180 days after an alleged violation. NRC will refer the employee to Section 211, which sets out the employee activities that are protected. They may include: (1) the employee's providing his or her employer information about an alleged violation of the Energy Reorganization Act or the Atomic Energy Act; (2) refusing to engage in any practice made unlawful by those statutes if the employee has identified the alleged illegality to the employer; (3) testifying before Congress or in any Federal or State proceeding regarding any provision of those statutes; (4) commencing, or causing to be commenced (or preparing to do so) a proceeding under those statutes or a proceeding to enforce any requirement under the statutes; (5) testifying or preparing to testify in any such proceeding; and (6) assisting or participating (or preparing to do so) in any such proceeding or in any manner or action to carry out the purposes of those statutes. (Please note that, as an employer under Section 211, DOE must post the provisions of Section 211 so that employees and contractors are aware of these provisions.)

When an allegation is made to NRC, NRC will inform DOE contractor employees of DOE's program established by 10 CFR Part 708 to protect certain contractor and subcontractor employees from reprisals for acts of "whistleblowing" or for refusals to engage in dangerous practices. NRC will refer these employees to DOE's regulations published in Part 708 which describe the DOE program administered by the Office of Contractor Employee Protection. Protected activities may include protections for reporting information evidencing: a violation of law, rule or regulation; an environmental, health or safety concern; or waste, fraud or abuse. The regulation protects employees who refuse to participate in a dangerous or illegal action.

Further, NRC will inform the DOE employee who makes an H&I allegation that, in addition to any individual remedy that he/she may have under DOE's own programs and procedures, the employee may have an individual right of action under 5 U.S.C. 1221, before the Merit Systems Protection Board. Section 1221 permits an employee, former employee, or an applicant for employment, to seek corrective action from the Board for any personnel action taken, or proposed to be taken, as a result of a prohibited personnel practice. NRC will refer the employee to 5 U.S.C. 2302(b)(8) for a description of prohibited personnel practices. They may include: (1) the taking of, the failing to take, or the threatening to take or not take a personnel action against an employee or

applicant because of a disclosure that the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation; (2) gross mismanagement; (3) gross waste of funds; (4) abuse of authority; or (5) a substantial and specific danger to public health or safety. To pursue this right of action, a Federal employee must first file a complaint with the Special Counsel; however, if the alleged personnel action can be appealed directly to the Merit Systems Protection Board, then the employee may dispense with the complaint to the Special Counsel and go directly to the Board. NRC will refer the DOE employee to the Board for full information on this remedy, should he/she wish to pursue it.

NRC Request for Information from DOE on Specific H&I Allegations

As noted, NRC has received and forwarded to DOE the H&I allegations referenced at the outset of this letter. Pursuant to the foregoing, NRC requests that DOE provide this office, within 30 days of the date of this letter, a letter that provides the status of DOE's investigation into the circumstances of the alleged H&I. In addition (or in lieu of the 30-day letter if DOE has completed its investigation by that time), we request you forward a copy of the DOE report (i.e., the written report requested earlier in this letter if an H&I allegation arises) when DOE's investigation is complete. We request that the DOE report, as a minimum:

1. Include a separate summary (suitable for public release as described below) of any information you have regarding the circumstances of the alleged H&Is;
2. Describe any actions taken or planned to ensure that this alleged H&I does not have a chilling effect in discouraging other DOE or contractor employees from raising perceived safety concerns; or, if you conclude no actions are needed, the basis for that determination.

The information provided in the DOE report should include the summary report as well as the detailed information documenting DOE's investigation and any actions taken. However, we are requesting that the summary should be a separate report, limited to information that would not identify any individual, and should not, to the extent possible, include any personal privacy, proprietary, or safeguards information, so that we can release it to the public and place it in the NRC Public Document Room. NRC would place the DOE report containing the detailed information documenting the investigation in NRC's allegation file. Personal privacy, proprietary, or safeguards information in this file, as well as any information that could identify individuals, would be withheld from release to the public.

In accordance with 10 CFR 2.790 of NRC's "Rules of Practice," a copy of this letter will be placed in the NRC Public Document Room.

The responses requested by this letter are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511.

D. Dreyfus

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If you need to discuss this approach further, please contact me on (301) 415-7800 or John T. Greeves, Director, Division of Waste Management on (301) 415-7319.

Sincerely,



Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

cc: R. Loux, State of Nevada
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R. Nelson, YMPO
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M. Murphy, Nye County, NV
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L. Fiorenzi, Eureka County, NV
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