January 16, 1998

MEMORANDUM TO: Dennis K. Rathbun, Director
Office of Congressional Affairs

Karen D. Cyr
General Counsel

FROM: Carl J. Paperiello, Director [Original signed by:]
Office of Nuclear Material Safety
and Safeguards

SUBJECT: DRAFT COMMENTS ON HIGH-LEVEL WASTE LEGISLATION

As a result of the October 31, 1997, Program Review of the High-Level Waste Repository Regulation Program, the Office of Nuclear Material Safety and Safeguards, in consultation with the Office of Congressional Affairs and the Office of the General Counsel, was directed to prepare comments on legislation passed in the Senate (S. 104) and the House (H.R. 1270). These comments, in addition to identifying any concerns related to implementation of the legislation, should also identify any "... provisions of the legislation which, if changed, could result in NRC resource savings without impacting the intent of the legislation" (WITS 9700300).

The Division of Waste Management, in consultation with the Spent Fuel Project Office, has prepared the attached draft comments, which should be forwarded to the legislative conference, once Conferees are named later this year.

Attachment: As stated

cc: J. Callan, EDO
A. Galante, CIO
J. Funches, CFO
H. Thompson, DEDR
J. Greeves, DWM
C. Haughney, SPFO
C. Reamer, OGC
T. Combs, OCA

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DRAFT COMMENTS ON NUCLEAR WASTE LEGISLATION S. 104 AND H.R. 1270

On April 29, 1997, Chairman Shirley Ann Jackson testified before the House Subcommittee on Energy and Power about high-level waste legislation then under consideration. In her testimony, Chairman Jackson discussed the U.S. Nuclear Regulatory Commission's views on key aspects of H.R. 1270 and S. 104. The Commission continues to believe that both H.R. 1270, passed by the House on October 30, 1997, and S. 104, passed by the Senate on April 15, 1997, contain the fundamental elements of an integrated high-level nuclear waste management system needed for the protection of public health and safety, and the environment. The Commission agrees with the fundamental approach taken in both bills, although if certain aspects of the bills are addressed in final legislation, it would reduce the NRC resources needed to implement the legislation. These aspects are explained in more detail below:

1) The Commission supports and recommends that the Congress include the provision, in H.R. 1270 on Waste Confidence, which would base that confidence on the Department of Energy's (DOE's) obligation to develop and carry out a complete, integrated spent fuel management system. The Commission believes H.R. 1270 is preferable, in this regard, to S. 104, which contains no comparable Waste Confidence provision.

2) The Commission recommends that the Congress take particular care that the overall schedule for DOE acceptance of spent fuel and high-level waste for storage at a licensed interim storage facility and its obligation to submit a license application for the permanent repository not set these programs on a collision course with respect to their respective needs for limited resources. Centralized interim storage and permanent geologic disposal are fundamental elements of the integrated nuclear waste management systems laid out in both bills, and the development and licensing of each should be afforded sufficient time and adequate funding. Because H.R. 1270, as passed on October 30, 1997, allows somewhat more time for licensing both a central interim storage facility and the geologic repository, the Commission prefers the House approach in this regard.

3) At present, NRC regulations at 10 CFR Part 72 do not contain acceptance criteria for licensing the storage of non-commercial spent fuel and defense high-level wastes. NRC would prefer that the application for Phase One of the Interim Storage Facility, as envisioned in H.R. 1270, be limited to storage of commercial spent fuel, to permit sufficient time for NRC to complete the necessary revisions to its regulations.

4) The Commission notes that the overall performance standard for the repository in H.R. 1270 differs from the standard in S. 104. Although either can be implemented without significant regulatory problems, and both are adequately protective of public health and safety, the Commission believes that the standard in S. 104 provides clearer direction for implementation, and would thereby simplify NRC's task in promulgating implementing regulations. For example, S.104 provides a definition of the term "critical group" and specifies factors that need not be considered in implementing the standard.

5) The Commission is concerned with direction given at section 205 (b) of H.R. 1270 that the Commission amend its regulations for high-level waste disposal "... within one year of the date of enactment." We believe that it would be difficult to accomplish these revisions in 1 year because of the significant technical work that must be completed to provide the basis

for development of a revised regulatory framework. In addition to providing sufficient time and resources to complete the necessary rule changes, legislation should make clear that amendments to the Commission's regulations to implement the Act shall not require the preparation of an environmental impact statement nor an environmental review, under the National Environmental Policy Act, as provided under existing law.