



To: R. Browning

**AGENCY FOR NUCLEAR PROJECTS
NUCLEAR WASTE PROJECT OFFICE**

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May 8, 1990

Mr. Carl Gertz, Project Manager
Yucca Mountain Project Office
Department of Energy
Nevada Operations Office
P.O. Box 98518
Las Vegas, NV 89193-8518

Dear Mr. Gertz:

At the April 24, 1990 meeting of the Nuclear Waste Technical Review Board's Panel on Environment and Public Health, Mr. Steve Frishman in his presentation stated that according to DOE, the requirements of the National Environmental Policy Act (NEPA) did not apply to Site Characterization Activities at Yucca Mountain. He attributed the statement to you. In the meeting you took exception to the statement and that according to your recall no statement was ever made and indicated to the Panel that the project was not exempted from NEPA. This letter is an attempt to set the record straight.

Reference is made to an August 31, 1987 letter from yourself to me which discussed the State's Environmental Baseline Proposal evaluated by your office (copy attached). The second paragraph third sentence states "The requirements of the National Environmental Policy Act (NEPA) do not apply to the Nevada Waste Storage Investigations (NNWSI) Project site characterization activities". Have you and the Department now changed its position on the applicability of NEPA during site characterization, as stated to the Panel?

As you are aware the State's position since the passage of the Nuclear Waste Policy Act in 1982 is that Site Characterization Activities are not exempt from NEPA. On the contrary we would argue that all NEPA requirements and companion CEQ guidelines are applicable, with the exception of (1) no EIS required prior to beginning site characterization, (2) no discussion of alternative sites (to Yucca Mountain) or alternative disposal methods required in the repository EIS, and (3) no discussion of the need for

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Nuclear Waste disposal is required in the EIS. These exceptions are the only exceptions to NEPA contained in the NWPA (1982) or the NWPAA (1987). We have and will continue to argue that the Environment Assessment for Yucca Mountain completed in 1986 did not contain a NEPA defined environmental baseline, and thus the Project has no defined basis upon which to assess impacts and develop mitigation strategies.

The State intends to continue its pursuit of funding to complete its NEPA-compatible environmental baseline survey of Yucca Mountain as a precursor to conducting its oversight of the Department's identification of impacts and development of mitigation strategies, development of site reclamation strategies, and preparing for EIS scoping and review. The baseline survey is deemed critical to the State's assurance that the environmental conditions at the site are adequately protected.

Sincerely,



Robert R. Loux -
Executive Director

RRL:lmg

cc: Don Deere, NWTRB
Bob Browning, NRC
Dade Moeller, NRC-ACHW
Duane Weigel, GAO



Department of Energy

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AUG 31 1987

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NUCLEAR WASTE PROJECT OFFICE

BASELINE PROPOSAL EVALUATION

As discussed in Stephen Kale's letter to you of June 23, 1987, the U.S. Department of Energy (DOE) has reviewed your proposal to implement a site-specific program of environmental baseline work prior to site characterization. We apologize for the delay in responding to your proposal; however, the overall DOE environmental program has been under development, and due to its connection to the Site Characterization Plan (SCP), has only recently been finalized.

The State has proposed investigations in seven broad environmental categories as necessary to establish a comprehensive environmental NEPA-defined baseline prior to site characterization. Site characterization is a preliminary decision-making activity as stated in Section 113(d) of the Nuclear Waste Policy Act (NWPA). The requirements of the National Environmental Policy Act (NEPA) do not apply to the Nevada Nuclear Waste Storage Investigations (NNWSI) Project site characterization activities. As a result, the DOE cannot fund the State's grant proposal based on the premise that an environmental NEPA-defined baseline must be established prior to site characterization.

However, the DOE recognizes the importance of collecting site-specific environmental data both before and during site characterization to ensure both protection of the environment and full compliance with the NWPA. The NNWSI Project environmental studies program is responsive to these concerns. Since the State has not yet had the opportunity to review certain NNWSI Project environmental study and planning documents still in preparation, it is understandable that the State would be concerned with the overall program of environmental studies.

The following text briefly outlines the NNWSI Project environmental studies program as it is currently envisioned by the DOE. Upon your review of this material, the NNWSI Project welcomes the opportunity to discuss its environmental program with representatives from the State of Nevada. Such discussions would serve to present the DOE program to the State; provide an opportunity to review the State's approach to environmental planning; provide a forum to discuss differences in those approaches; and finally provide an opportunity to discuss in what, if any, environmental studies areas the State would seek funding.

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The DOE does plan to conduct site-specific environmental studies in response to several statutory and regulatory requirements, as well as general data and information needs identified as appropriate to support the repository program. These studies include:

1. Studies related to potential significant adverse impacts presented in the Environmental Monitoring and Mitigation Plan (EMMP);
2. Studies necessary to support environmental regulatory activities (permits and approvals) as indicated by appropriate Federal and State regulatory agencies for site characterization activities;
3. Studies related to establishing a suitable post-site characterization environmental baseline for preparation of an Environmental Impact Statement pursuant to the NWPA and NEPA; and
4. Studies necessary to support compliance with applicable environmental regulatory requirements for the construction and operation of a repository should the Yucca Mountain site be selected and approved for such development.

The EMMP is but the first step in the overall program and is designed to address requirements of NWPA Section 113(a). Concurrent efforts will build upon this program in developing a comprehensive understanding of the site's environment and the potential impacts to that environment as NWPA provisions are carried out by the DOE.

It is DOE's intent to begin environmental field studies that will include those areas addressed by the State's proposal. These studies will begin as soon as possible and prior to the initiation of significant site characterization activities. Through this approach, any changes to the environment which cause significant adverse impact should be detected early, and will result in additional monitoring programs to be included in the EMMP.

Each of the study areas suggested by the State, as well as others, will be evaluated for inclusion in DOE's overall program for environmental field studies. The enclosed matrix presents the areas to be studied under each program element. Each study will be documented in an Environmental Field Activity Plan and will be sent to the State for review. You will note that regulatory-driven monitoring programs have yet to be completely identified. While some programs are currently underway, others must await consultations with appropriate Federal and State agencies. These consultations were recently initiated with a July 13, 1987, presentation to the U.S. Environmental Protection Agency, Region IX, and will be extended to other Federal and State agencies in the very near future.

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The DOE recognizes that the State of Nevada may desire to initiate a program of independent environmental field studies to support their oversight responsibilities that would supplement those underway or planned by the DOE. It must be emphasized that State-sponsored investigations cannot unreasonably interfere with DOE activities or introduce an unreasonable delay in executing the DOE mission under the NWPA. To ensure adequate coordination and understanding of DOE and State activities, we suggest that discussion on this topic be held at your earliest convenience.

This approach should facilitate execution of the State's oversight role and ensure timely discussion of important topics for the mutual benefit of the DOE and the State.

Please contact Wendy R. Dixon of the Waste Management Project Office with regard to your interest in participating in the cooperative environmental program suggested, and to define arrangements for discussions of how best to coordinate and implement such a program.



Carl P. Gertz, Project Manager
Waste Management Project Office

WMPO:RDK-2626

Enclosure:
Matrix of Areas
to be Studied

cc w/encl:
V. J. Cassella, HQ (RW-222) FORS
A. B. Benson, HQ (RW-223) FORS

PROGRAM ELEMENT STUDY AREA	ENVIRONMENTAL MONITORING AND MITIGATION FOR SITE CHARACTERIZATION	OTHER STUDIES	REGULATORY COMPLIANCE FOR SITE CHARACTERIZATION	EIS AND SITE SUITABILITY DATA COLLECTION	REGULATORY COMPLIANCE FOR REPOSITORY DEVELOPMENT
LAND USE			• BLM ACCESS REQUIREMENT	• STANDARD	• POSSIBLE LAND WITHDRAWAL
AIR QUALITY	• TSP AND PARTICULATE MATTER (10 MICRONS)	• CRITERIA POLLUTANTS	(1) REGISTRATION CERTIFICATE	• STANDARD	(1) REGISTRATION CERTIFICATE
METEOROLOGY			(1) REGISTRATION CERTIFICATE	• STANDARD & SCP-RELATED	(1) REGISTRATION CERTIFICATE
CLIMATOLOGY				• SCP-RELATED STUDIES	
HYDROLOGY		• SCP-RELATED AND WATER QUALITY STUDIES	(1) UNDERGROUND INJECTION CONTROL, WATER QUALITY & USE	• STANDARD & SCP-RELATED	(1) MAY BE REQUIRED
GEOLOGY/SOILS		• SCP AND RECLAMATION RELATED STUDIES		• STANDARD	(1) MAY BE REQUIRED
NATURAL RESOURCES			• FREE USE PERMIT (OLM)	• STANDARD	(1) MAY BE REQUIRED
ARCHAEOLOGY AND HISTORICAL RESOURCES	• SITE-SPECIFIC PRE-CONSTRUCTION SURVEYS	• AERIAL SURVEYS	• PROGRAMMATIC AGREEMENT & HIST. PRESERVATION	• STANDARD	(1) PROGRAMMATIC AGREEMENT & HIST. PRESERVATION
NATIVE AMERICAN CULTURAL RESOURCES			• ANRFA & NIIPA REQUIREMENTS	• STANDARD	(1) ANRFA & NIIPA REQUIREMENTS
RADIOLOGICAL	• RADON AND RESUSPENSION		• DOE ORDERS	• SUITABILITY	(1) NRC REQUIREMENTS
ECOSYSTEMS	• SITE-SPECIFIC PRE-CONSTRUCTION SURVEYS	• AERIAL SURVEYS	• CONSULTATIONS	• STANDARD	(1) MAY BE REQUIRED
NOISE		• LIMITED SURVEYS		• STANDARD	
AESTHETICS		• LIMITED EVALUATIONS		• STANDARD	
RECLAMATION AND RESTORATION		• FEASIBILITY STUDIES	• BLM ACCESS REQUIREMENT		
TRANSPORTATION AND UTILITIES			• CONSULTATIONS	• STANDARD	

(1) INDICATES THAT THE POTENTIAL EXISTS FOR REGULATORY AGENCIES TO REQUEST OR REQUIRE STUDIES AS A CONDITION OF PERMIT ISSUANCE OR APPROVAL OF PLANNED ACTIVITIES REQUIREMENTS TO BE ESTABLISHED THROUGH CONSULTATION WITH APPROPRIATE AGENCIES.

ENCLOSURE