



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

February 5, 1996

MEMORANDUM TO: Trip Rothschild
 Deputy Assistant General Counsel

FROM: John Austin, Chief *John O. Thoma for*
 Performance Assessment and
 High Level Waste Integration Branch

SUBJECT: COMMENTS ON DOE'S QUESTIONS AND ANSWERS RE: S1271, NUCLEAR
 WASTE POLICY ACT OF 1995

You requested comments on the Department of Energy's (DOE's) responses to questions from the Senate to DOE concerning S1271, the Nuclear Waste Policy Act of 1995. NRC consolidated comments are due to the Office of Management and Budget (OMB) by February 6, 1996. The Division of Waste Management coordinated this response with the Spent Fuel Program Office since many of the questions concerned transportation or storage issues. Overall, the package of DOE responses contained many facts which we have either seen before, or DOE has the lead responsibility and we do not have a basis for contending their facts (such as overall cost estimates). However, the staff does have comments about some of the DOE responses and they are provided in the following paragraphs. These comments are for your consideration in determining what should actually be communicated to OMB.

On Question 3 under Answer (a) [page 6], DOE states that it could submit a license application by 2010 "assuming that a modified licensing approach could be adopted." But the response is silent on the definition, feasibility, or implications of the modified licensing approach. DOE should be more specific in describing its position on a modified licensing approach. Independently of any DOE effort to develop a modified licensing approach, NRC has initiated efforts to simplify NRC regulations for high-level waste (HLW) disposal to both enhance safety and focus solely on Yucca Mountain. Continuing with this response to Question 3 on page 7, the last sentence states that a disposal application could be indefinitely deferred. To be complete, the response should at least refer to responses to other questions (such as 13, 14, and/or 16) on the implications of indefinite deferral of the disposal application.

On Question 16 under Answer (a) [page 47], the DOE response does not discuss the NRC Waste Confidence Decision which is directly related to the question. Before the last sentence on page 4, the following should be added: "In addition, the NRC Waste Confidence Decision would need to be revisited."

On Question 19 under Answer (a) [page 53], the staff believes the DOE answer should have ended after the first sentence in part (a). The manner in which the NRC Waste Confidence Decision is referenced in this response is not applicable to the question. It is appropriate to state that one regulatory

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decision that would require to be revisited to permit indefinite storage of spent nuclear fuel at reactor sites would be the NRC Waste Confidence Decision. If DOE wanted to give a more detailed answer, the staff believes the response should state that indefinite storage of spent fuel at reactor sites would be a fundamental change in national policy. In order for such a national policy change to occur, at least four specific elements are needed: (1) strong, specific legislation would need to be enacted, (b) a Generic Environmental Impact Statement would need to be approved, (c) existing on-site storage would require a technology review/upgrade to insure its viability over long time periods, and (d) dedicated resources would need to be provided for the entire storage period. However, DOE could more easily end the response to question 19(a) after the first sentence.

On Question 19 under Answer (b) {page 53}, DOE states "The risks to public health and safety and the environment from indefinite on-site storage are regulated by radiological limits established by the Nuclear Regulatory Commission and the Environmental Protection Agency." Although this is a factual statement, it implies the NRC regulations on exposure limits specifically address indefinite on-site storage, which is not the case. The staff is not saying that our regulations on allowed exposure would definitely change because of indefinite on-site storage at reactor sites, but some level of thought and analysis would be needed to determine if any changes are necessary.

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Decision. If DOE wanted to give a more detailed answer, the staff believes the response should state that indefinite storage of spent fuel at reactor sites would be a fundamental change in national policy. In order for such a national policy change to occur, at least four specific elements are needed: (1) strong, specific legislation would need to be enacted, (b) a Generic Environmental Impact Statement would need to be approved, (c) existing on-site storage would require a technology review/upgrade to insure its viability over long time periods, and (d) dedicated resources would need to be provided for the entire storage period. However, DOE could more easily end the response to question 19(a) after the first sentence.

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