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Acting Governor

STATE OF NEVADA

ROBERT R. LOUX
Executive Director

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August 4, 1989

Mr. Robert E. Browning, Director
Waste Management Division
Office of Nuclear Material
and Safety and Safeguard
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Browning:

At the July 6-7 NRC/DOE meeting on Quality Assurance and the Exploratory Shaft Facility (ESF) Design Control Process, the State of Nevada expressed concern with the new approach taken by the NRC staff relative to its review of the Department of Energy's program. Specifically the concerns centered on; 1) what appears to be a relaxation of the staff's review of the DOE's quality assurance program prior to the start of the site characterization, and 2) emergence of a new category of interactions, called consultations, with the Department on quality assurance and ESF Title II design process matters. This letter is intended to clarify and amplify our remarks made at the July 6-8 meeting, and is being forwarded under separate cover to your staff as our attachment to the meeting minutes.

It is clear from both correspondence and public statements that the NRC position is to require that DOE have a qualified quality assurance program in-place prior to the start of site characterization. DOE, on numerous occasions, has committed to having such a fully qualified program in-place. It appears now that this NRC position has been eroded. As early as 1985, NRC (Miller to Vieth letter, June 25, 1985) stated that a complete and fully implemented QA program should be in place prior to start of site characterization. Later correspondence (Kennedy to Linehan letter, December 18, 1986, Linehan to Knight letter, March 8, 1987) addressed the need for a "fully qualified" QA program prior to site characterization. In July 1988 NRC defined a "qualified" QA program as having plans and procedures in place which satisfy 10 CFR 50 Appendix B, 10 CFR 60 Subpart G, and Staff Guidance Documents, and satisfactory completion of audits to verify

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effective implementation of the QA program. It was further indicated that two observation audits would be needed by the NRC to accept a QA program, assuming no major problems. However, we note that deterioration of this position and definition began in early 1989 when NRC staff announced that it would review "selected" technical products during a qualification audit before NRC acceptance of the program. It is obvious that NRC no longer intends to review the complete DOE QA program, but only "selected" parts, and would no longer require its own audits prior to acceptance, but rather would observe and accept DOE internal audits as demonstration of full program implementation. The State supported the original NRC position requiring the Department to have a fully qualified QA program in-place and the definition of what constituted a fully qualified program. We cannot now support this relaxation of that position and definition, as it no longer provides assurance that DOE will have a qualified program in-place and fully implemented prior to the start of site characterization. The NRC cannot allow the DOE to continue its practice of the last nine years of gathering data of questionable quality and then contaminating the literature set for Yucca Mountain with analyses and interpretations based upon data of suspect validity.

At the July 6-7 meeting, the staff also indicated that the "NRC and DOE must have ongoing consultations in the ESF, Title II design process. These must be timely so that DOE has an opportunity to consider NRC's comments, if necessary, before it completes subsequent steps". Separately, the staff stated that the "NRC would entertain consultations on qualifying DOE's quality assurance programs." 10 CFR Part 60, Subpart B Licenses indicates that during the preapplication period the NRC's responsibility is limited to review and comment, not consultation as now being contemplated by the staff. It is clearly not NRC's responsibility to guide the Department's program. It is the Department's responsibility to develop it's characterization program, including quality assurance and ESF design, and ensure that the program meets NRC requirements. NRC's requirement is to review the program to determine if it meets relevant applicable regulation. Guidance and assistance in program development and execution is clearly not a regulator's responsibility. The State opposes the concept of NRC consultations with the Department of Energy for the purpose of assisting and guiding the specifics of DOE's development of a repository program which meets the regulations. We have stated this position in numerous past discussions with you and your staff. Furthermore, we believe that our position is not only fully consistent with the intent of 10 CFR Part 60, but also is consistent with the guiding principles of the so-called Morgan-Davis Agreement (FR, Vol. 48, No. 166, Aug. 25, 1983, p. 39701).

An example of the consequences of the NRC staff's apparently eroding commitment to its prior positions in regard to its dealing with the DOE as a potential license applicant is contained in the June 28, 1989 letter from Samuel Rousso, Acting Director of the DOE

OCRWM, to Hugh Thompson, of the NRC staff. This letter makes it clear that Mr. Rousso believes the NRC staff should do more to assist and guide the DOE in implementing its site characterization responsibilities. Also included is the clear implication that for NRC to continue under current (albeit eroded) review practices, or for NRC to reinstate a greater arm's-length relationship with DOE only frustrates the DOE's progress, and reduces interested parties' confidence in DOE's capability to plan and implement its site characterization program. The underlying assumptions of this DOE position are not consistent with NRC's established regulatory role, yet are somewhat reflective of the continuing trend of NRC staff interaction with the DOE discussed earlier in this letter.

The matters discussed in this letter are of great concern to the State of Nevada as they are at the core of the intent of the Nuclear Waste Policy Act's separation of roles of the major parties (DOE, NRC, and the affected state) involved in geologic repository site selection. The Act recognizes this clear separation of roles and duties as an indispensable element of promoting confidence in the safety of a geologic repository. By any logical interpretation, the independent, objective role of the regulator must be preserved throughout the regulatory process.

I would be pleased to discuss further the views presented in this letter at your convenience, should you so desire.

Sincerely,

Robert Loux
Executive Director

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cc: Nevada Congressional Delegation