



AGENCY FOR NUCLEAR PROJECTS
NUCLEAR WASTE PROJECT OFFICE

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May 10, 1994

Mr. Joseph J. Holonich, Director
Repository Licensing and Quality
Assurance Project Directorate
Division of High-Level Waste Management
Office of Nuclear Material Safety and Safeguards
United States Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Re: Topical Report Review Plan

Dear Mr. Holonich:

We have reviewed the NRC's final Topical Report Review Plan which was transmitted to Mr. Dwight E. Shelor of the Department of Energy's Office of Civilian Radioactive Waste Management on February 28, 1994. Although representatives of Nevada's Nuclear Waste Project Office participated in several meetings regarding the preparation of the Review Plan and made written recommendations for alterations to the Review plan, it appears that the NRC has not taken into account all of Nevada's concerns. This letter is intended to restate those concerns for the record.

The final Review Plan describes the method by which NRC staff will accept, review and approve topical reports and then states: "DOE will then be able to reference this topical [report] in its L[icense] A[pplication]." However, the Review Plan is unclear regarding the significance of a "reference" in a license application, and hence potentially controversial in a licensing proceeding. The Review Plan does not specify what use or weight, if any, the "reference" to a topical report would be entitled in such a licensing proceeding. It should be made clear that it has none.

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Nevada proposed that any staff evaluation of a topical report state clearly:

This staff evaluation addresses an issue which the Department of Energy has determined is important to safety or important to waste isolation in the context of an overall analysis by the NRC of licensing of a high-level nuclear waste repository. Reference to this staff evaluation in any license application to, or proceeding before, the Nuclear Regulatory Commission shall be a reference to the information, references and data contained herein only and shall not constitute any inference of the determination of any fact or resolution of any issue which must ultimately be determined by the Nuclear Regulatory Commission, any licensing board or panel, or any other judicial or quasi-judicial agent of the Commission.

However, the final Topical Report Review Plan merely states:

[A]cceptance of a topical report by the NRC staff is not a piecemeal determination of whether DOE's LA complies with NRC requirements. Because the topical report would resolve issues pertaining to only a portion of the geologic repository system, the staff will need to ensure in the LA review that the resolution of issues continues to be acceptable in the context of the overall system. Therefore, the NRC staff will need to evaluate the use of the topical report in the LA when it determines if DOE has acceptably demonstrated compliance with 10 CFR Part 60. In addition, if new information becomes available, the staff may choose to conduct an additional review at any time. Furthermore, issuance of an SE shall not constitute a commitment to issue any authorization or license, or in any way affect the authority of the Commission, the Atomic Safety and Licensing Board, other presiding officers, or the Director, Office of Nuclear Material Safety and Safeguards in any proceeding under the Atomic Energy Act of 1954, as amended.

The phrase "topical report would resolve issues" connotes some determination of compliance with NRC's licensing standards. That connotation conflicts with the previous statement regarding "piecemeal determination." The phrase "when it [NRC staff] determines if DOE has acceptably demonstrated compliance with 10 CFR Part 60" connotes that such a staff determination will limit the decision making latitude of the Nuclear Regulatory Commission or any licensing board or panel acting as a quasi-judicial agent of the Commission. Nevada, as a necessary party to any licensing proceeding conducted by the NRC or licensing panel operating under its authority, insists that all facts or issues remain open for determination in that proceeding. It is not satisfactory merely to

state that "issuance of an SE shall not constitute a commitment to issue any authorization or license, or in any way affect the authority of the Commission, [etc.]," as it is not the "authority of the Commission" which is at issue. It is, rather, the admissibility, weight and persuasive effect of evidence, the inference of facts, and the freedom of the Commission or licensing board to entertain all issues raised by any party in the repository licensing proceeding.

In order to prevent staff interference with ultimate licensing determinations, Nevada recommended that the staff's review not seek to verify, validate or sanction any design methodology, test, technique or analytical model, nor its application to a particular technical issue at a specific site, nor in any way to create any implication of the determination of any fact or resolution of any issue which must ultimately be determined in a repository licensing proceeding. The final Topical Report Review Plan clearly contemplates this precise activity.

In order to insure that Nevada was entitled to full knowledge of the data included in any topical report, Nevada recommended that any topical report and references contained therein rely only on data which has previously been provided to the NRC, state or affected local government pursuant to 42 U.S.C. 10137. The final Topical Report Review Plan does not require this.

As you can see, NRC's final Topical Report Review Plan did not address the concerns Nevada expressed. Nevada's particular concerns should not be dismissed merely because Nevada is opposed to the development of a high-level nuclear waste repository at Yucca Mountain. Nevada's concerns address a larger, institutional, system-decision issue with which the NRC should be significantly concerned. When decisions are made which involve so many people over so many years, there is a tendency for early-established "foundational" facts to become accepted as undisputed, even though they have not been tested. If these foundational facts turn out to be wrong, the facts stacked upon them may topple. It would not behoove the NRC to make a major repository licensing decision relying on foundational facts by "reference", only to discover that those facts were wrong resulting in an environmental catastrophe. The only guarantee against this is to permit adverse parties to thoroughly litigate all facts in a licensing proceeding.

Sincerely,



Robert R. Loux
Executive Director

RRL/JHD/mjj