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FEB 26 1986

J. J. Linehan, Project Manager
Division of Waste Management
U. S. Nuclear Regulatory Commission
M/S 623-SS
Washington, DC 20555

DOCUMENTATION OF CUSTODY OF CORE (WMPO ACTION ITEM #86-752)

This letter comes as an interim response to your November 18, 1985, letter to me regarding the documentation of custody of core for the Yucca Mountain investigation. We are writing regarding clarification of a couple of points so that we can answer your questions and develop procedures that you will find acceptable.

In the opening paragraph of your letter, you noted requirements for forensic documentation of the procedures and methods utilized during drilling, transportation, and storage of core will be essential to a successful defense of a license application. Since you are asking for something of sufficient detail to satisfy a court of law, and something that may have been required previously, we were puzzled by the balance of your letter. While you were interested in documenting your specific concerns, we are interested in understanding precedents and procedures previously established. We noted specifically no reference to regulations, regulatory guides, or generic technical positions with regard to handling of core. In particular, we note no reference or identification of any documents in which they can be found. Also, we note no reference to precedent or practice that may have already been established.

We are also puzzled to receive this letter after some of the interactions we have had previously. Since we know that the regulatory hearing would be conducted under the rules of an administrative law board, we have been more concerned about what could be entered into evidence in such hearings. I can remember vividly asking Bill Olmstead the question as to what could be entered as evidence during his briefing of the DOE management in Washington, D. C. on Wednesday, September 26, 1984. I was surprised at his answer that anything could be entered as evidence. As I remember, he made no qualification about what would be required as proper forensic documentation of such evidence to be held in good stead by the board. As a matter of fact, there was no reference or discussion of any special rules governing evidence or how Quality Assurance (QA) requirements were important to evidence. The issue of custody of material was not indicated as important. It is clear that one of my shortcomings was failure to put this question in writing to establish a formal response.

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For the record we are enclosing two items. The first are pages from Mr. Olmstead's presentation from September 26, 1984. You will note that it states "rules of evidence apply." We would like to request reference to the documents or precedents that NRC feel most accurately describe the "rules of evidence" that are used by the administrative law boards in the review of a license application. A second item you will find enclosed is a copy of my letter to Bill Bennett pursuant to the briefing by Mr. Olmstead. Please note my suggestion that Mr. Olmstead be detailed to the DOE for a six month period in order to help us better understand the requirements and expectation of the NRC and the administrative law board. In view of these developing circumstances, we believe that this suggestion is taking on greater importance.

As we work to establish the documentation that you want, we are asking for your help. We are sure you are aware that the Department has never been through a licensing review; the Nuclear Regulatory Commission (NRC) has had experience with over 100 of them. You can see that you are much more familiar with the forensic requirements for licensing hearings. We also are formally asking you to provide copies of this specific regulation or a compendium of practice regarding the custody of core and identification of previous licensees who are known to have procedures and practices that have been known to be acceptable to the NRC staff or the administrative law board.


Donald L. Vieth, Director
Waste Management Project Office

WMPO:DLV-697

Enclosures:

1. Pages from Olmstead's presentation
2. Ltr 10/12/84 Vieth to Bennett

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J. J. Linehan

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cc w/encls::

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HEARINGS:
PROCESS REQUIRES

- **COMPLETE, TECHNICALLY DEFENSIBLE RATIONALE**

- **SUPPORTING FACTS AND DATA COLLECTED UNDER
QUALITY ASSURANCE PROGRAM**

- **CONSIDERATION OF UNCERTAINTIES AND ALTERNATIVE
INTERPRETATIONS**

- **COMPLETE DOCUMENTATION**

HEARINGS:

LEGAL, ADJUDICATORY PROCESS

- **BURDEN OF PROOF ON APPLICANT**

- **INDEPENDENT ADMINISTRATIVE LAW BOARD**

- **RULES OF EVIDENCE APPLY**

- **MULTIPLE COEQUAL PARTIES**

- **OPPORTUNITY FOR DISCOVERY AND CROSS EXAMINATION**

- **FINDING BY BOARD: "REASONABLE ASSURANCE" THAT 10CFR60 CRITERIA WILL BE MET?**

OCT 12 1984

material in a tutorial manner. We have entered into an agreement (Morgan/Davis) with NRC that is specifically designed to facilitate communication between our agencies. NRC was particularly anxious to enter into this agreement so they could be assured of the ability to get information from the DOE projects. This attitude on the part of NRC can be readily seen in their early demand that we provide them data within five days after it was acquired. However, there is an obverse side of that coin; that is, DOE should have equal right for access to information that is currently in the sole possession of NRC and is important for the Department to do a competent job. In my case, as an example, between June and September we conducted one workshop and three data reviews to provide information to NRC to facilitate their review of the EA. The following table identifies some of the details of these interactions.

<u>DATE</u>	<u>ACTIVITY</u>	<u>NRC PEOPLE INVOLVED</u>	<u>DOE AND CON-TRACTOR PEOPLE INVOLVED</u>	<u>DOE AND CON-TRACTOR MAN HOURS</u>
7/10- 7/12	GEOCHEMISTRY WORKSHOP	10	42	Est 2,000
7/17- 7/20	CONCEPTUAL DESIGN DATA REVIEW	15	20	Est 1,200
7/24- 7/27	HYDROGEOLOGY DATA REVIEW	15	14	Est 750
9/17- 9/28	GEOLOGY DATE REVIEW	14	22	Est 1,200

As a result of the signing of the site-specific agreement we can expect to have such interactions on a monthly basis. These meetings are primarily conducted by DOE so the NRC staff can more efficiently do their job. Because of the heavy investment of DOE's time in helping NRC do its job, I think it is perfectly reasonable to ask NRC for a reverse courtesy.

I would like to further comment on the timeliness of their actions. Just to clarify the basis for my point, is the fact that this briefing was given to the project managers August 25, 1983. The value of this briefing was obvious then with respect to communicating the appropriate insight to my staff and contractors. I asked Seth Coplan in October 1983, for the NRC to bring the team to the field. By the time this briefing will be given to my staff, as much as 1 1/4 years will have passed. I am disturbed and puzzled by the philosophy that is implied; that is, if NRC wants something it must be supplied to them quickly, when we need some help from NRC we get it when they jolly well get around to it.