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WM CONTROL

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AGENCY FOR NUCLEAR PROJECTS
NUCLEAR WASTE PROJECT OFFICE

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January 23, 1987

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

WM Record File	WM Project
102.3	11
Joan-ticket	Docket No.
Distribution:	PDR ✓
REB	XL PDR ✓ (W)
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Dear Mr. Browning:

This is in response to your letter to me of December 12, 1986, responding to my letter to you of November 4, 1986. Both letters concern, in part, the NRC staff's plans for environmental reviews of the Department of Energy's site characterization activities at Yucca Mountain.

In your letter, you indicate that, "NRC considers that the EAs referred to in Section 113 (a) of the NWPA are the same EAs discussed in Section 112." That misses the point of my concern, and does not answer the statutory question, whether a site specific environmental baseline must be established, either in the EA, or in the SEP itself. You then go on to say that you expect to exercise your authority under Section 113 (b) by, "examining the descriptions of adverse impacts presented by DOE."

Section 113 (b) of the Act requires the Department to submit a site characterization plan prior to sinking shafts at any candidate site. That plan must include, "(iii) plans for the decontamination and decommissioning of such candidate site, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities if it is determined unsuitable for application for construction authorization for a repository;." Examining the descriptions of any adverse impacts presented only by DOE will not, in my judgment, permit the NRC to conduct an adequate review of its plans for the mitigation of any significant adverse environmental impacts, since the Department itself does not intend to first determine, on a site specific empirical basis, the current state of the environment at Yucca Mountain.

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The preliminary draft of the Environmental Monitoring and Mitigation Plan for site characterization at Yucca Mountain, prepared by the Nevada Nuclear Waste Storage Investigations Office, provides that:

"In order to establish what any environmental impacts are candidates for monitoring under Section 113 (a), each of the impact analyses presented in Chapter 4 of the EA were reviewed by technical discipline and a list was created of all potentially significant environmental impacts discussed in those analyses. Since the EA was based on historical data, and since no site specific primary baseline data gathering was implemented specifically in support of the EA, these conclusions represented the most reasonable findings possible, given the limitations of the available database, and contain some degree of uncertainty or variability." (Emphasis supplied) (EMMP Page 4-1)

It is not sufficient, in my view, to simply say that the EA referred to in Section 113 (a) of the NWPA is the same as the Section 112 EA. The question is, more precisely, does the site characterization plan itself require the Department to establish a site specific empirically based environmental baseline, as an integral part of the site characterization plan. I believe that it does.

Any reasonably adequate mitigation plans will require that an environmental assessment based upon site specific environmental baseline information be part of the site characterization plan. I am at a loss to understand how the Department can plan to mitigate impacts without such a baseline, when the Department admits that no such baseline exists, and the only data they have is "historical." The assessment of impacts in the EA was based, as the Department admits, on subjective insights to the Yucca Mountain environment, rather than on a data base specific to that site. For mitigation planning for the SCP to be based on less than objective, site specific information is simply not acceptable. Therefore, a credible environmental assessment based upon site specific baseline information must be a component of the Yucca Mountain SCP, and the baseline must be obtained prior to further site disturbance from any site characterization activities.

In your letter, you go on to say that you will be, "considering the reasonableness of the mitigation measures proposed by DOE," in the SCP. Reasonable mitigation measures cannot be proposed unless they are based upon an environmental assessment of site characterization that itself is based upon a credible environmental baseline for the Yucca Mountain site. You also say that the NRC will be, "including comments to DOE in our overall evaluation of DOE site characterization plan." Unless

your comments on the site characterization plan fault DOE for a lack of specific environmental data, and thereby require DOE to conduct such environmental studies at Yucca Mountain prior to site characterization, the NRC cannot do a more credible job of reviewing environmental aspects of the site characterization plan than it will have done for the EA itself.

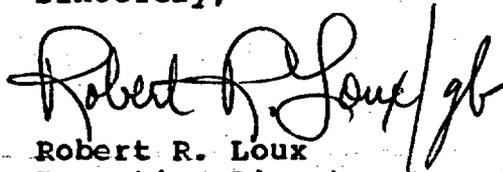
I am also concerned that the NRC's plans will not permit it to carry out its NEPA responsibilities in an adequate manner.

As you know, Section 114 (b) provides that any EIS prepared in connection with a repository proposed to be constructed shall, "to the extent practical," be adopted by the Commission. If DOE continues to rely only on "historical data" without gathering any site specific environmental baseline data of any kind, the NRC may be precluded from adopting DOE's EIS because of that shortcoming. In that event, of course, it will simply be too late to correct that failure, since the Yucca Mountain environment will have been so immeasurably changed as the result of site characterization activities that establishing an accurate environmental baseline post-hoc will simply be impossible.

The points I raise in this letter are of serious concern to our program here in Nevada. I would appreciate your review of my concerns, and any response you might have, at your earliest convenience.

Should you have any questions, please do not hesitate to contact me at any time.

Sincerely,



Robert R. Loux
Executive Director

RRL/gjb

cc: Grant Sawyer