



**AGENCY FOR NUCLEAR PROJECTS  
NUCLEAR WASTE PROJECT OFFICE**

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January 18, 1989

Lando W. Zech, Jr.  
Chairman  
Nuclear Regulatory Commission  
One White Flint North Building  
11555 Rockville Pike  
Rockville, Maryland 20852

RE: Regulatory Strategy and Schedules For The High-Level  
Waste Repository Program/SECY-88-285

Dear Chairman Zech:

On October 5, 1988, William Parler and Victor Stello of your staff presented to the Commission SECY-88-285, entitled Regulatory Strategy and Schedules For The High-Level Waste Repository Program. That document presented a strategy for Nuclear Regulatory Commission staff activity in the high-level nuclear waste program leading to the ultimate licensing decision by the Commission. This letter is intended to communicate the thoughts and opinions of the State of Nevada regarding that regulatory strategy. In general, we find much with which we can agree and some, perhaps as always, with which we must disagree. Below I suggest a course of action endorsing the Commission's commencement of work on some of its important responsibilities while reserving for later action those activities which, in Nevada's opinion, require more information and which time, fortunately, permits to be taken up later.

For several years, we and your staff have been discussing theoretically the "early resolution of licensing issues". In the context of the abstract question of resolving issues early, Nevada has always taken the position that, aside from obvious disqualifiers, no issue involving the ultimate demonstration of a repository's capability to isolate high-level nuclear waste should be resolved prior to the actual licensing proceeding in which all parties are able to fully "litigate" that issue. NRC personnel, on the other hand, have argued that many issues may be

capable of being resolved either by rulemaking or staff technical position papers. We have not heretofore been engaged in any discussion on particular rulemaking issues, except of course in a speculative way in casual conversation with your staff.

SECY-88-285 now gives us an opportunity to discuss particular rulemaking issues in what we feel is a much better informed way. And as always, more particular information illuminates where we agree and disagree. In short, we see a number of rulemakings proposed by SECY-88-285 which we would recommend that the Commission commence at this time.

The list of potential rulemakings which the staff proposes to commence are found in Enclosure 8 to SECY-88-285. Our analysis of the list contained there concludes that the proposed rulemakings fall into three categories: 1) those rulemakings which clearly would reduce regulatory uncertainties and which we believe may be commenced now; 2) those rulemakings which do not address regulatory uncertainties (that is, ambiguities in the existing regulations), but rather address areas which the Department of Energy would like to make either more lenient or prescriptive and should therefore not be reopened; and 3) those rulemakings which must await the publication of EPA's high-level waste standards.

The first category, those on which we believe the Commission should proceed, includes rulemakings: 1) implementing the Nuclear Waste Policy Act provisions requiring NRC to adopt DOE's environmental impact statement (ongoing); 2) creating a licensing support system (ongoing); 3) further amplification of the meaning of the phrase "substantially complete containment" used in 10 CFR Part 60; 4) establishing emergency planning criteria under subpart I of 10 CFR Part 60; and 5) revising rules regarding the content of and threshold for acceptance of the license application.

Proposed rulemakings in the second category include: 1) further amplification of the meaning of the phrase "anticipated processes and events and unanticipated processes and events" used in 10 CFR Part 60; 2) further amplification of the meaning of the phrase the "disturbed zone" used in 10 CFR Part 60; 3) further amplification of the meaning of the phrase "prewaste emplacement ground water travel time" used in 10 CFR Part 60; and 4) definition of "design basis accident dose limit" for repository operations.

The third category includes rulemakings which depend upon other rulemaking activity, either by EPA or NRC. They include: 1) methodology for proving compliance with EPA standards; 2) conforming Part 60 to U.S. Environmental Protection Agency high-level waste standard (ongoing); and 3) establishment of criteria for containment for greater than class C low-level waste when it is disposed of in a deep geologic repository.

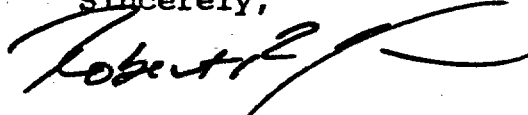
Enclosure 8 to SECY-88-285 also lists "technical positions to guide DOE's resolution of technical uncertainties". Though we are aware that these "technical positions" are staff issuances which are not binding on the Commission's hearing boards or the Commission itself, we are concerned that "technical positions" may unintentionally acquire the appearance or effect of rule, albeit unofficial, given the statutorily shortened time frame of the licensing proceeding and the political context in which the repository program is conducted. This does not mean that we are opposed to general interaction between NRC staff and DOE staff in which NRC staff advises DOE staff of its technical knowledge and point of view, particularly if Nevada's technical staff is a participant in those discussions. When that technical advice is reduced to written technical positions, however, we feel that the Commission may inadvertently constrain itself and the parties in the license proceeding by earlier staff determinations which will not have had the benefit of either rulemaking or a contested case process. Those determinations, if undertaken too early, may also be made without the benefit of all of the information which site characterization is intended to produce. Regulatory guides, relating to form and content of the submission of technical information to the Commission, could be of assistance to all prospective parties to a licensing proceeding. We would recommend that the Commission consider including those in its rulemakings.

We would now recommend to the Commission that those actions which we have classified in group 1 above be instituted by the Commission's staff at the present time. (Ongoing actions should, of course, be continued.) The others should be deferred for later consideration. We acknowledge the Commission's authority and freedom to initiate any or all of the proposed rulemakings at any time the Commission desires. Nevertheless, with respect to those rulemakings in groups 2 and 3 above we would request the Commission's courtesy of seeking the State of Nevada's opinion regarding their appropriate timing before commencement.

In several recent instances the Commission has given the Nevada Nuclear Waste Project Office the opportunity to inform the Commission of our point of view on various aspects of the Department of Energy's high-level nuclear waste program and NRC's licensing activity. We sincerely appreciate the opportunities which you have extended to us and look forward to future opportunities in which we may do the same. Thank you for permitting me to express our point of view on the Commission's regulatory strategy. We would be pleased to discuss the points

raised in this letter with you or the Commission staff at your convenience, should you desire.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert B. Loux", with a long, sweeping horizontal stroke extending to the right.

Robert B. Loux  
Executive Director

RRL:cs

cc: Commissioners  
William C. Parler, General Counsel  
Victor Stello, Executive Director for Operations  
Hugh Thompson  
✓ Bob Browning