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AGENCY FOR NUCLEAR PROJECTS  
NUCLEAR WASTE PROJECT OFFICE

Capitol Complex  
Carson City, Nevada 89710  
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August 28, 1986

Ben Rusche, Director  
Office of Civilian Radioactive  
Waste Management  
U.S. Dept. of Energy  
1000 Independence Ave.  
Washington, DC 20585

WM Record File 102.3  
WM Project 11  
Docket No. \_\_\_\_\_  
PDR   
LPDR

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Dear Mr. Rusche:

A copy of your July 25, 1986 letter to Dr. Frank Press of the National Academy of Sciences has recently come to my attention, regrettably not from the United States Department of Energy, but from another state's officials. I am most concerned about what is proposed in that letter and the manner in which the Department is proceeding. I specifically request that the initiative suggested by that letter be curtailed until the State of Nevada has had the opportunity to consider together with all of the interested parties (the NRC, the NAS, DOE and affected states and Indian tribes) the implications of broad NAS involvement and oversight of DOE's nuclear waste program, particularly those aspects of the program involving Yucca Mountain.

To: RBanning

Your letter proposes that the NAS Board on Radioactive Waste Management oversee DOE's site characterization activities with particular emphasis on site specific and comparative evaluations through the establishment of suitably constituted panels of the Board.

The Nuclear Waste Policy Act contemplates that the NRC, through licensing and the states, through statutory "participation" (see Nevada v. Herrington, 775 F.2d 559 (9th Cir. 1985), will oversee DOE's program. Your veiled effort to preempt the effectiveness of both by garnering the institutional endorsement of the National Academy of Sciences, and by involving its Board on Radioactive Waste Management to the extent proposed by your letter, is an

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affront to the Congress' faith in the Commission's and states' respective commitments to protecting the health and safety of their constituents. You are, of course, aware of the significant common identity of persons under contact to DOE and members of the NAS.

If "suitably constituted panels" of the NAS Board were established and used to review U.S. DOE site characterization activity, DOE will have created a federal advisory committee pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, Section 1, et seq. All of the such panel's activities would be required to meet the procedural requirements for such committees including the filing of a charter with the Secretary of Energy (Sec. 9); open, public meetings chaired by a Department of Energy official (Sec. 10); and timely notice of meetings at the call of the Department official to consider an agenda approved by him (Sec. 10).

The spirit of the Nuclear Waste Policy Act requires that any review panel with whom DOE is working during site characterization must be open to the same state oversight and participation as DOE and its contractors would itself be. If the NAS Board becomes involved, we will expect that the deliberation of any panel be open, adequately noticed to all parties, based on pre-published agendas, and properly recorded and reported to all parties with interest. We would expect, at any time, to be entitled to present information and argument to such panels on any issue they are considering and that our views be taken into account by those panels. Additionally, State and tribal representatives should be afforded, at a minimum, ex officio status on each panel that is developed.

The Nuclear Regulatory Commission is now developing its generic technical position on peer review for high-level nuclear waste repositories. Though the NRC is only in the process of formulating its standards of acceptable and reliable peer review, and there are aspects of the proposal with which we disagree, it is certainly the Commission's province to determine how panels of technical experts review the results of DOE's site characterization. The NAS, either independently or in conjunction with DOE, is not the proper body. We certainly would agree that the NAS is a prestigious body and that its members are, as a general proposition, a highly talented group. Nevertheless, the appropriate role for NAS members in site characterization is through their individual contributions to, or their individual review of the body of technical knowledge which will be set before the Nuclear Regulatory Commission and subject to the rigors of NRC required peer review and cross examination by interested parties in a licensing proceeding.

Ben Rusche, Director

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We cannot object too strenuously to an effort to bootstrap the competence of DOE discovered information by obtaining the institutional endorsement of the NAS. Such a process could compromise the Commission's duty to deny a repository construction authorization, if in their opinion it was warranted. Certainly that is not what Congress intended when it gave the Commission the complete repository licensing authority.

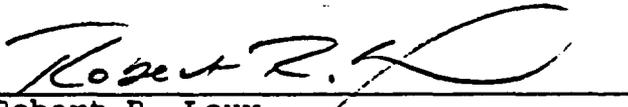
We are particularly concerned that DOE would venture on the proposal contained in your July 25 letter without any notice to affected repository states and tribes. The Department has a statutory duty to consult and cooperate with Nevada, a duty which has been ignored in this instance. Nevada has a duty to oversee DOE's program, and as State officials we cannot perform that duty unless you keep us informed as to what is going on. We expect and urge your cooperation in the future.

As required by the Nuclear Waste Policy Act, I expect and look forward to your providing consultation to the affected states and tribes regarding any relationship between the DOE and NAS prior to any agreements being finalized so that we can have input into that decision-making process. I look forward to your prompt response to this request.

Sincerely,

NUCLEAR WASTE PROJECT OFFICE/  
AGENCY FOR NUCLEAR PROJECTS

BY:

  
Robert R. Loux  
Director

RRL\*jm

cc: Dr. Frank Press                      Hon. John Dingell  
    Hon. Peter Domenici                Hon. James McClure  
    Hon. Morris Udall                  NRC Commissioners  
    Nevada Congressional Delegates