



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

Capitol Complex
Carson City, Nevada 89710
Telephone: (702) 687-3744
Fax: (702) 687-5277

January 27, 1997

Mr. John Greeves, Director
Division of Waste Management
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Greeves:

It has been nearly five years since we and the NRC staff exchanged views and expectations regarding "issue resolution" in the context of the Department of Energy's high-level nuclear waste program. Since that time, the NRC staff has placed increasing emphasis on issue resolution, and in fact, it is now the stated goal of prelicensing technical interactions between the NRC staff and DOE's Office of Civilian Radioactive Waste Management personnel regarding the repository program.

In his August 11, 1992 letter to me, B.J. Youngblood, then Director of the NRC's Division of High-Level Waste Management, stated our common understanding that "issue resolution at the [NRC] staff level only means that there are no more questions and no more disagreements, at a particular point in time." He also noted that "the staff has both the right and responsibility to reopen any issue, or to request further information on any issue, at any time during the prelicensing period when warranted by new information or analysis." Our mutual understanding of the non-binding nature of prelicensing "informal conference" as described in 10 CFR Part 60.18(1) also was reiterated.

9702050168 970127
PDR WASTE PDR
WM-11
(4.)

1

1/0
NRC3
102.3

Since that time, circumstances of the repository program have changed. OCRWM is in an accelerating mode of ending site characterization work on topics relevant to licensing. The NRC staff, because of funding limitations, is reducing its independent research and review of OCRWM technical plans and reports. The State, due to lack of appropriated funds, has terminated the technical and scientific oversight work of most of its contractors.

Of current concern is that the NRC staff, through both the increased emphasis on issue resolution and the changing circumstances of the overall waste program, appears to be attaching new implications to prelicensing issue resolution. For some issues, resolution now appears to essentially imply "closure", i.e., no further inquiry will be needed in a DOE repository license application review. And for other issues, any continued inquiry will be reserved for the time when the staff is actually reviewing the submitted application. Notwithstanding the language of 10 CFR Part 60.18(1), we find this trend to be an unacceptable and dangerous one.

This trend among the NRC staff is of particular concern for at least three reasons. First, the staff members who, through technical review, recommend to management that an issue is "resolved" are most likely not the same people, sharing the same views and experience, who later will be reviewing a license application and who, in practice, will be bound by the earlier finding unless they take extraordinary measures to reopen the issue. Second, with OCRWM considering some issues to be "closed" from their point of view, there will be little, if any, chance that new information or analysis would be discovered that would trigger the NRC staff to reopen an issue previously determined to be "resolved". And third, with OCRWM's and the NRC staff's greatly increased reliance on total system performance assessment (TSPA) and sensitivity analysis, resolution of any of the NRC staff's Key Technical Issues is premature, pending review of OCRWM's license application Total System Performance Assessment and the role that each Key Technical Issue plays in that TSPA.

An example of this trend in NRC staff thinking regarding issue resolution is found in the staff's draft statement of the objective of an upcoming, February 25-26, 1997, Technical

Exchange on Igneous Activity. The Statement of Objective is as follows:

"To achieve issue resolution on the approach to considering igneous activity in TSPA-VA [Viability Assessment] and identify areas of agreement and disagreement on the relevant geologic date, the probability of volcanism, models for calculating consequences, and performance assessment models of igneous activity."

It is legitimate under 10 CFR Part 60 for the NRC staff to comment on DOE's site characterization work, and even identify areas of current agreement and disagreement, but to seek resolution, i.e., closure, on the OCRWM's approach to this issue in a TSPA that even OCRWM admits cannot be considered the license application TSPA puts an improper burden on the NRC license application review staff to justify the allocation of resources to reopen the issue when it should never have been considered resolved.

The NRC staff draft agenda also assumes that scientists who have carried out independent investigations on this topic will make presentations in the meeting and assist in achieving the objective of issue resolution on this topic. Nevada has agreed that its scientific and technical information will be made available for all parties in a manner that will assist in expediting the licensing proceedings, and by definition, Nevada will be a party to that proceeding. Nevada has not agreed, and will not agree to participate in an NRC issue resolution process that is premature and controlled by NRC staff and management to be binding on NRC staff license application reviewers, unless that staff can persuade management that the issue should be reopened.

This is especially important since the TSPA-VA is intended by DOE to contribute heavily to the basis of a prelicense application decision by Congress and the President regarding whether to continue pursuit of repository development at Yucca Mountain. Once an issue that contributes to this "viability" decision is said to be "resolved" by NRC staff and management, there clearly will be strong reluctance to reverse this position and reopen the issue in a license application review without overwhelming safety justification.

Nevada will continue to be represented and participate in NRC/DOE repository program interactions as part of our oversight duties, to the extent we can justify the expense. But Nevada will not support technical participation in a prelicensing issue resolution process that, under current circumstances, appears to be increasingly binding on any future NRC staff review of a DOE repository license application.

If you have questions about our views on this matter and the position stated in this letter, please contact me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux", with a large, stylized flourish at the end.

Robert R. Loux
Executive Director

RRL:cs

cc: Paul Pomeroy, ACNW