

102.3/NLS/86/06/17

JUN 24 1986

- 1 -

Grant Sawyer, Chairman
Commission on Nuclear Projects
Valley Bank Plaza, Suite 1700
300 S. 4th Street
Las Vegas, Nevada 89101

WM Record File
102.3

WM Project 11
Docket No. _____
PDR (w/enc 1)
LPDR (N)

Distribution: _____

(Return to WM, 623-SS)

Dear Chairman Sawyer:

As a follow-up to my June 11, 1986, letter to you, below are responses to three questions the Commission on Nuclear Projects posed during my visit on May 15, 1986.

1. If, during the NRC regulatory process, the NRC denies a construction authorization for the site for which application has been submitted by DOE, what is contemplated under the national program to achieve a repository?

NRC denial of a construction authorization would require DOE to select another site as the basis for a repository license application. The Department of Energy (DOE) has the ultimate responsibility for the siting and construction of a repository, thus DOE has the responsibility to plan for this contingency. Enclosed is a section from DOE's Mission Plan on contingency plans which is broad in scope. As mentioned in this document, DOE plans to better define contingencies as the program progresses.

2. If, during the NRC regulatory process, the NRC denies the operating license for the site for which DOE already has constructed the facility, what is contemplated under the national program to achieve a repository?

Assuming that you are referring to a situation where the Commission unconditionally and irrevocably denies the application, DOE would be required to select another site as the basis for a repository license application. DOE has the responsibility to plan for this contingency. On the other hand, a situation could occur where DOE may be able to develop the requisite data or techniques which could facilitate the eventual issuance of an operating license by NRC.

3. If a state raises a significant technical issue with DOE and DOE rejects the state's concern, what opportunities does the state have to request NRC to pursue the issue? If the state has no "right of appeal to NRC," what can the state expect from the NRC?

As alluded to in this question, the state has the opportunity under Sections 116 and 117 of the Nuclear Waste Policy Act (NWSA) to formally

*See previous concurrences.

1044

8609160064
PDR WASTE
WM-11
PDR

OFC	WMPC	WMPC*	WMPC*	WM*	ELD*	NMSS	NMSS
NAME	NStill	DMattson	JOBunting	REBrowning	CCameron	DMausshardt	JGDavis
DATE	:86/06/17	: 6/17/86	: 6/17/86	: 6/18/86	: 6/17/86	: 6/ /86	: 6/ /86

request resolution of issues by DOE. If the implementation of these procedures is unsatisfactory, there are opportunities for judicial review and legislative oversight.

Although the NWPA does not specifically address NRC's role of state and tribal interaction during the HLW pre-licensing program, NRC encourages consultation with interested parties. During this pre-licensing phase, a state may, at any time, raise a technical issue with the NRC. We will review the issue and determine whether it is a potential problem area in terms of health and safety. If NRC agrees that the issue is valid, it would be adopted by NRC and be entered and followed in the NRC Open Item Tracking System, as part of the Licensing Support System. The issue would be identified to DOE for resolution prior to receipt of a license application, or DOE may incorporate the issue resolution in the application. An available alternative is that after a license application is received by NRC, a state participating in the HLW licensing proceeding could raise an issue as a contention, whether or not NRC is in agreement with the validity of the issue, during the adjudicatory process.

I hope this information is of assistance to the Commission on Nuclear Projects. Please let me know if you require additional information.

Sincerely,

(SIGNED) John G. Davis

John G. Davis, Director
Office of Nuclear Material
Safety and Safeguards

Enclosure:
DOE Mission Plan, Vol. 1,
Part I, Chapter 2.4,
Contingency Plans

cc: Commission Members
Robert Loux, State of Nevada

OSP
Steve Saloman
6/20/86

telephone concurrence w/DMattson

*See previous concurrences.

OFC	: WMPC <i>dm</i>	: WMPC*	: WMPC*	: WM*	: ELD*	: NMSS <i>M</i>	: NMSS <i>JGD</i>
NAME	: <i>DN</i> Still	: DMattson	: JOBunting	: REBrowning	: CCameron	: DMAusshardt	: JGDavis
DATE	: 86/06/17 <i>20</i>	: 6/17/86	: 6/17/86	: 6/18/86	: 6/17/86	: 6/18/86	: 6/27/86

102.3/NLS/86/06/17

- 3 -

DISTRIBUTION: NMSS-860485

WM s/f 102.3

PDR	JSurmeier	JGreeves	DKunihiro, Reg. V
NMSS r/f	MKearney	JLinehan	DMAusshardt
NStill	JOBunting	PJustus	JGDavis
DMattson	RBrowning	CCameron	JHoffman
PAltomare	MJBell	PPrestholt	CCudd

*See previous concurrences.

OFC	:	WMPC	:	WMPC*	:	WMPC*	:	WM*	:	ELD*	:	NMSS	:	NMSS
NAME	:	NStill	:	DMattson	:	JOBunting	:	REBrowning	:	CCameron	:	DMAusshardt	:	JGDavis
DATE	:	86/06/19	:	6/17/86	:	6/17/86	:	6/18/86	:	6/17/86	:	6/ /86	:	6/ /86

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PAltomare	MJBell	PPrestholt	CCudd

Handwritten notes:
6/18/86
per telecon
w/ NStill
per WPC

OFC	: WMPC	: WMPC	: WMPC	: WMPC	: NMSS	: NMSS
NAME	: NStill	: DMattson	: JOBunting	: RBrowning	: CCameron/	: DMAusshardt : JGDavis
DATE	: 86/06/17	: 6/17/86	: 6/17/86	: 6/18/86	: 6/17/86	: 6/17/86 : 6/17/86



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

SP
Comments

Grant Sawyer, Chairman
Commission on Nuclear Projects
Valley Bank Plaza, Suite 1700
300 S. 4th Street
Las Vegas, Nevada 89101

Dear Chairman Sawyer:

As a follow-up to my June 11, 1986, letter to you, below are responses to three questions the Commission on Nuclear Projects posed during my visit on May 15, 1986.

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2. If, during the NRC regulatory process, the NRC denies the operating license for the site for which DOE already has constructed the facility, what is contemplated under the national program to achieve a repository?

~~NRC denial of a license application would require DOE to select another site as the basis for a repository license application. DOE ~~has~~ has the responsibility to plan for this contingency. I assume that you are referring to a situation where the Commission unconditionally and irrevocably denies the application, as opposed to a situation where DOE may be able to develop the requisite data or techniques which could facilitate the eventual issuance of an operating license by NRC.~~

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could occur
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3. If a state raises a significant technical issue with DOE and DOE rejects the state's concern, what opportunities does the state have to request NRC to pursue the issue? If the state has no "right of appeal to NRC," what can the state expect from the NRC?

As alluded to in this question, the state has the opportunity under Sections 116 and 117 of the Nuclear Waste Policy Act (NWP) to formally

DATE OF DOCUMENT	DATE RECEIVED	DUE DATE	REVISED DUE DATE	COMPLETION DATE	CONTROL NUMBER
05/19/86	05/20/86	06/02/86			860485
OFFICE ASSIGNED WM <i>Gnattson</i>		NAME OF ORIGINATOR AND OFFICE Davis, J. G. - NMSS			
REFERRED TO <i>WmPL</i>		DESCRIPTION APPEARANCE BEFORE THE NEVADA COMMISSION ON NUCLEAR PROJECTS -- MAY 15, 1986			
TRANSITION TYPE (Code Option)		REMARKS			
<input type="checkbox"/> 1. Add new items <input type="checkbox"/> 2. Delete items <input type="checkbox"/> 3. Change item date <input type="checkbox"/> 4. Update item status (close out) <input type="checkbox"/> 5. Revised due date <input type="checkbox"/> 6. Correct item status		<i>duw 5/21 Cathy Nancy</i> <i>nb 6/2</i> 1st date - 6-2-86 <i>Memo to Grant Sawyer</i> <i>Closed 6/11/86 w/ ltr to G. Sawyer.</i> 2nd date - 6-20-86 <i>(Closed on time 6-20-86)</i> <i>To: Davis for signature</i> <i>Signed by Davis on</i> <i>6/25/86</i>			
DISTRIBUTION cc: RFBurnett RECunningham DBi lausshardt RSBrown, Jr.		U.S. NUCLEAR REGULATORY COMMISSION			
NRC FORM 300 (1-77)		WORK ITEM TRACKING SYSTEM (WITS, NMSS)			

Rec. 5/21/86
Wm PL - 5/30/86

6/20

102.3



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

May 19, 1986

NOTE TO: R. E. Browning
FROM: John G. Davis
SUBJECT: APPEARANCE BEFORE THE NEVADA COMMISSION ON NUCLEAR PROJECTS--
MAY 15, 1986

I believe my statement before the subject Commission went well. Please thank the staff for preparing me.

Following my presentation, there were several questions asked of me for which I committed to supplement the record (and my answer) by a written reply. Please assure that replies are developed and sent to the Chairman of the Nevada Commission with copies to Commission members and Loux. In advance of development of the replies I would like promptly to acknowledge with the same individuals that the questions will be answered and send the requested information on cask certifications. FC should supply this information. However, I would like it channeled through you.

The information to be supplied is:

- o Information on the NRC certificates for the DOE casks that were used for transporting spent fuel from EMAD to Idaho.
- o If, during the NRC regulatory process, the NRC denies construction authorization for the site for which application has been submitted by DOE, what is contemplated under the national program to achieve a repository?
- o If, during the NRC regulatory process, the NRC denies the operating license for the site for which DOE already has constructed the facility, what is contemplated under the national program to achieve a repository?
- o If a State raises a significant technical issue with DOE and DOE rejects the State's concern, what opportunities does the State have to have NRC pursue the issue? If the State has no "right of appeal to NRC" what can the State expect from the NRC?

Please have replies developed by June 2. If you want to discuss with me, lets do so. I have enclosed a draft preliminary reply. FC, SG, and WM should assure its accuracy.

Enclosure:
As stated


John G. Davis

cc: R. F. Burnett
R. E. Cunningham
D. B. Mausshardt
R. S. Brown, Jr.

DRAFT #1
JGDavis:bsp
5/19/86

cc: Committee Members
Browning
R. E. Cunningham
Loux

Dear Chairman Sawyer:

I appreciated the opportunity on May 15, 1986, to discuss the U.S. Nuclear Regulatory Commission role under the Nuclear Waste Policy Act of 1982. I agreed to provide certain information and to supplement my answers to several questions raised by the Commission.

The Commission asked for information relative to the NRC certificates for the DOE casks used to ship spent fuel from the EMAD facility to Idaho. Copies of the certificates and some pertinent information ^{are} ~~is~~ enclosed. This does not include all the background information used by the NRC in making its decision to issue the certificates. Enclosed also is the NRC regulation under which certificates are issued and spent fuel is transported. You should be aware that the EMAD shipments, although made in NRC certified casks, were not under NRC jurisdiction but under DOE and DOT jurisdiction. DOE transportation does not come under NRC regulation except as required by NWSA Section _____. These casks were certified by NRC at the voluntary request of DOE. Also, since these casks were not moved under NRC jurisdiction, which requires notification of state officials prior to movement and requires NRC route approval, for safeguarding against deliberate acts of sabotage or seizure, the DOE was not required to take these actions. We understand that DOE did voluntarily notify states of the shipments.

Answers are being prepared for the following questions to supplement my verbal replies. These will be send to you soon.

- o If, during the NRC regulatory process, the NRC denies construction authorization for the site for which application has been submitted by DOE, what is contemplated under the national program to achieve a repository?
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- o If a State raises a significant technical issue with DOE and DOE rejects the State's concern, what opportunities does the State have to have NRC pursue the issue? If the State has no "right of appeal to NRC" what can the State expect from the NRC?

Again, I appreciate the opportunity to appear before the Nevada Commission on Nuclear Projects.

Sincerely,

John G. Davis, Director
Office of Nuclear Material
Safety and Safeguards

Fm ELB
on NV
QLS

Cathy - some rough ideas for starters. I'll talk to you on Wednesday.

Chip

SECOND BULLET

It is the DOE responsibility to plan for this contingency. CATHY - check the DOE Mission Plan and/or PDS to see if they account for the failure to get a construction authorization

THIRD BULLET

We assume that reference to the "operating license" means the license to receive and possess waste under 10 CFR 60.41. Assuming that NRC categorically determines that this license should not be issued (as opposed to imposing license conditions or requiring further action by DOE before the Commission could act to grant the license), it is the DOE responsibility to plan for this contingency.

FOURTH BULLET

In the pre-license application stage, the State could bring such a technical issue to NRC's attention. The NRC would treat the issue like any potential safety issue that we consider in the pre-license application stage. In the post-license application stage, the State could of course propose this as a contention in the Commission's licensing proceeding.

DRAFT #1
JGDavis:bsp
5/19/86

- FC's comment (JGD) Mark-up
- No Input from SG/ In red. R Rentschler

cc: Committee Members
Browning
R. E. Cunningham
Loux

We understand that 6 shipments are to be made in a commercial cask model no. TW80 and TW82.

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DOE, as required by the DOT regulations (49 CFR 173.471), has registered with the NRC for each of these casks. We have also enclosed copies of NUREG-0283, Vol 1 and Vol 2 which includes the certificates and users of NRC approved packages.

Answers are being prepared for the following questions to supplement my verbal replies. These will be send^t to you soon.

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Again, I appreciate the opportunity to appear before the Nevada Commission on Nuclear Projects.

Sincerely,

John G. Davis, Director
Office of Nuclear Material
Safety and Safeguards

DOE transportation ^(A) is not subject to ~~does not come under~~ NRC licensing and regulation except as required by NWPA Section 137, which addresses transportation for interim storage Programs.