

CNWRA890045/PA STATUTES

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JUN 14 1989

Mr. Allen R. Whiting, Director
 Systems Engineering and Integration Department
 Center for Nuclear Waste Regulatory Analyses
 P.O. Drawer 28510
 6220 Culebra Road
 San Antonio, Texas 78284

Dear Mr. Whiting:

SUBJECT: NRC COMMENTS ON CNWRA'S "RATIONALE AND PRIORITY FOR ADDRESS
 OF STATUTES AND REGULATIONS RELEVANT TO HLW MANAGEMENT"

The Division of High-Level Waste (HLW) Management and the Office of the General Counsel have reviewed the subject document transmitted by your letter of May 12, 1989 and have the following general comments for your consideration. As you may recall, some preliminary comments were shared with you and other CNWRA representatives at the joint NRC/CNWRA technical meeting held on May 18, 1989 in Crystal City, Virginia. These preliminary comments were contained in the meeting notes summarizing the technical discussions.

The stated purpose of the May 12 document is two-fold. First it is to establish a rationale for the selection of statutes and regulations which have application or potential application to NRC's HLW program. And second, it is to establish priorities for the analysis of those pertinent statutes and regulations.

With regard to the later objective, we concur with the Center's selection of priorities for performing the necessary regulatory analyses. The recommended rank-order for this analysis is consistent with the discussions we have had on this subject since March 1989. However, with regard to the former objective, we do have the following comments.

Priority 1 Statutes and Regulations

page 6 -- 10 CFR Part 2. The Commission recently instructed the General Counsel to review, analyse, and interpret 10 CFR Part 2. Any interpretation of this regulation should, therefore, be obtained from that Office. Once the General Counsel's analysis of 10 CFR Part 2 has been transmitted to the Commission, we will dispatch a copy to you.

Priority 2 Statutes and Regulations

page 9 -- Priority 2 Statutes and Regulations Rationale. As previously noted, we agree with the recommended rank order for the analysis of the pertinent statutes and regulations relating to transportation. However, NRC may exercise its licensing authority regarding the transportation cask prior to rather than following an evaluation and selection of the waste form, as you have stated.

Priority 3 Statutes and Regulations

page 10 -- 10 CFR Part 2. See previous comments under "Priority 1 Statutes and Regulations."

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page 10 -- 10 CFR Part 9. Although the Commission has not asked the General Counsel to review 10 CFR Part 9, we are recommending that you treat this regulation in the same manner as 10 CFR Part 2 owing to some general similarities between the two.

Appendix A (pages A-1 through A-7). It has been recommended that the following two statutes be added to the list of "related statutes and regulations" because they may effect NRC's regulatory authority in the HLW area:

- 16 USC 1531 et. seq. Endangered Species Act
- 42 USC 1996 et. seq. American Indian Religious Freedom Act

In closing, it is also recommended that you include for consideration any Memoranda of Understanding (MOUs) that might exist between DOE and other Federal Agencies whose regulations have application or potential application to the respective HLW programs. At present, DOE is known to have MOUs with the Department of Transportation and the Mine Safety and Health Administration; other MOUs may exist as well.

If you have any questions concerning our review, please contact me or Mike Lee of my staff.

Sincerely,
ORIGINAL SIGNED BY
Philip M. Altomare
Program Element Manager
Waste Systems Engineering
and Integration

cc: Stuart A. Treby, OGC

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