

CNWRA880058/R8

DEC 06 1988

Allen R. Whiting, Director
Waste 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: COMMENTS ON DRAFT OUTLINE FOR WSE&I MILESTONE R8

Pursuant to your letter dated November 8, 1988, this letter transmits NRC staff comments on the "Draft Outline for WSE&I Milestone R8." Milestone R8 is a report to NRC on recommended rulemaking needs for repository activities including priorities for the rulemakings and their supporting rationale. These comments should be considered in conjunction with comments previously provided to you by Joseph Bunting's letter, dated November 16, 1988, which suggested you present to NRC the Center's findings based on its analysis of both the uncertainty and the proposed resolutions.

Our concerns are both general and specific in nature, and are presented in the enclosure for your consideration.

Sincerely,

Original Signed By

Philip M. Altomare
Program Element Manager
Waste Systems Engineering
and Integration

Enclosure: As stated

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General Comments

The "Final Specification/Acceptance Criteria for WSE&I Major Milestone R7, I7, R8 and R9" defined two reports under Part C requirements -- (1) items recommended for rulemaking, and (2) the areas of recommended staff emphasis for review of the Yucca Mountain Site Characterization Plan (SCP). Accordingly, NRC acknowledges that the "Draft Outline for WSEI Major Milestone R8" represents one part of that requirement. We recommend that you present reports no. 1 and no. 2 as separate reports even though they may be included under the same cover.

In addition, we suggest renaming this report as "Preliminary Recommendations for Regulatory Actions Resulting from Analysis of 10 CFR Part 60." This may avoid giving the impression that your recommendations are final and are based upon a complete analysis of Part 60. We also recommend that this report clearly state its intended objective at the onset, perhaps in the introduction. Accordingly, any constraints on the development of recommendations for resolving uncertainties should be fully discussed upfront in order to inform the NRC staff about the rational limits of your recommendations. Attachment 1 of the "Final Specification/Acceptance Criteria for WSE&I Milestones R7, I7, R8 and R9" calls for site-constrained technical uncertainties and uncertainty reduction methods to be developed to the extent practicable. However, based on the draft outline, it is apparent that technical uncertainties will be omitted from this report entirely.

Specific Comments

Section 1.0 -- Introduction

The second paragraph states that where an uncertainty exists with respect to a given regulatory requirement, no demonstration of compliance can be required of DOE until the uncertainty is resolved. This statement is incorrect. NRC rules are frequently written in a manner which provides flexibility to an applicant. For example, Part 60 now allows the Commission to approve or specify alternative performance objectives for repository subsystems. The resulting regulatory uncertainty (e.g., what objectives might be approved or specified) is not an impediment to enforcement of the "default" objectives contained within the rule. Moreover, it is not unusual for an applicant to identify a previously unrecognized area of uncertainty within the NRC's regulations, for the applicant to propose a resolution of that uncertainty as part of his submittal, and for the NRC staff and/or licensing board to evaluate the submittal on its merits. Therefore, we suggest you provide clarification of what is intended by the cited statement.

Section 2.0 -- Regulatory Actions Available

We strongly suggest that CNWRA recommendations to the NRC staff on available approaches to resolve the regulatory uncertainties include the criteria, attributes, and types of analyses that were applied in order to

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develop those recommendations. These analyses should involve the development of information needs (Process Block No. 8 of the 22-step PA development process) and, to the extent practicable, technical uncertainties in accordance with the requirements provided by Attachment 1 of the "Final Specification/Acceptance Criteria for WSEI Milestones R7, I7, R8, and R9."

In regard to the list of regulatory actions available to NRC to resolve uncertainties, additional alternatives that might be considered are:

1. an analysis of the regulatory history;
2. an NRC policy statement;
3. an NRC topical report;
4. an NRC reviewed and accepted DOE topical report; and
5. a Memorandum of Understanding (MOU);

Subsection 2.2 -- This subsection would be more appropriate if described as a workshop/technical meeting with participation of all affected parties.

Section 3 -- The Program Architecture

Since the Program Architecture (PA) is adequately described in several other documents, we suggest including a brief discussion with adequate reference. However, in order to present the information regarding regulatory uncertainties in the proper context, it will be necessary to discuss the specific parts of the PA process that are used and state why they are used.

Subsection 4.1.1 -- Text of the regulatory requirement.

If a description of regulatory and institutional uncertainties is included in section 4.1.2.1, then it is not necessary to repeat this description in this subsection.

Subsection 4.1.2.1 -- First Uncertainty

Item no. 6 is intended to identify agencies and affected groups of proposed regulatory actions. It appears that this information is likely to be the same for each regulatory action. Therefore, there is no need to repeat it here.

For each uncertainty, it would be useful to cite other related regulatory requirements where that uncertainty exists. For example, if a regulatory uncertainty identified in 10 CFR Part 60 is the same as that in 10 CFR Parts 50, 61, 72 and 73, then it should be stated as such.

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Section 5.0 -- Summary of Proposed Regulatory Actions

We suggest that the summary of proposed regulatory actions also include the addition of alternatives recommended for consideration, as in section 2.0.

Finally, it appears that this section is intended to describe recommended techniques to implement the proposed regulatory actions. It is not clear what is being proposed by this discussion nor what is the intended purpose.