

NOV 18 1988

MEMO FOR ALTOMARE

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MEMORANDUM FOR: Philip M. Altomare, Program Element Manager
Engineering Branch, HLWM

FROM: Seth Coplan, Section Leader
Systems Performance Section
Geosciences & Systems Performance Branch, HLWM

SUBJECT: COMMENT ON DRAFT OUTLINE FOR MILESTONE R8

Section 1.0 of the subject draft outline contains the statement: Where an uncertainty exists with respect to a given regulatory requirement, no demonstration can be required of DOE until the uncertainty is resolved.

I am very concerned about the implications of this statement for two reasons. First, a statement of what can or cannot be required of DOE seems to be a matter of NRC licensing policy which should be formulated by the Commission and staff rather than by a contractor. If advising the staff on policy matters is within the scope of the contractor's work, this advice should clearly be identified as such, and should not be stated in the conclusive manner cited above.

Second, the cited statement appears to be 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.

For these reasons, I recommend that the cited statement be deleted or that it be rewritten to discuss early resolution of uncertainties as a means of streamlining the licensing review process.

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Seth Coplan, Section Leader
Systems Performance Branch
Geosciences & Systems Performance Branch, HLWM

cc: R. Ballard
J. Bunting

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