



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

CHAIRMAN

January 9, 2004

The Honorable Brian Sandoval
Attorney General
State of Nevada
Reno, Nevada 89502

Dear Attorney General Sandoval:

I am responding on behalf of the U.S. Nuclear Regulatory Commission (NRC) to your letter of December 2, 2003, regarding NRC staff audits and evaluations of the Department of Energy efforts being conducted in anticipation of an application for a construction authorization for a high-level waste repository at Yucca Mountain. The specific staff activities of concern in your letter were conducted during the weeks of November 17-21 and December 8-12, 2003. You also inquire regarding the status of the State of Nevada's request for another meeting with the staff on Yucca Mountain hydrology. As I'm sure you are aware, a similar letter concerning these audits and evaluations, from Mr. Martin Malsch on behalf of the State of Nevada, dated November 17, 2003, was responded to by Mr. Lawrence Chandler on November 18, 2003.

The NRC has a well-established policy of openness in conducting its various programs and, in implementing that policy, commonly goes significantly beyond what is mandated by law. NRC's high-level waste program is no exception, considering that the vast majority of exchanges with DOE are conducted in open meeting-style forums which the State and other organizations have frequently attended. More specifically, in recognition of the unusual, preapplication relationship between DOE and NRC that is a consequence of the Nuclear Waste Policy Act, this policy is extended with respect to exchanges between DOE and the NRC staff through a specific agreement. Although this agreement broadly provides for public meetings, it also provides that quality assurance audits and surveillance, the types of activities in which the staff was here engaged, are not interactions within the scope of the agreement. In addition, it was the view of the NRC staff that the nature of these particular staff evaluations is not conducive to a "meeting"-type environment and that they would be substantively hampered if the evaluations had to be conducted in such a venue. Subject to the guidance provided by the NRC Open Meeting Policy and the NRC staff/DOE agreement, that judgment is within the sound discretion of the staff.

The opportunity for the State and other interested persons to participate meaningfully in the regulatory process associated with both preapplication interchanges and the eventual review of a license application for the Yucca Mountain high-level waste repository is not compromised by the current DOE/NRC staff efforts. Your letter does not identify any specific harm to the State's interests. The results of the staff's evaluation will be documented and made publicly available. And, at an appropriate time following receipt of an application from DOE, notice of an opportunity to participate formally in an adjudicatory proceeding will be provided. The provisions of 10 C.F.R. § 63.63, which you invoke, do not, in the context of the concerns raised in your letter, require more.

In conclusion, the Commission concurs in the staff view that in this pre-licensing stage, the effectiveness of some interactions might be substantively hindered if they are conducted in a “meeting”-type environment. Moreover, given that the staff intends to make the substance of such interactions publicly available, we believe that the process the staff is following will keep all interested groups informed. Consequently, the Commission does not intend to take any further action on this matter.

In regard to the State’s request for a meeting between the NRC staff and State experts on Yucca Mountain hydrology, which would be a continuation of an earlier meeting held last June, we are informed that the staff is still considering your request and will respond in the near future.

Please let me know if you have any further questions regarding this matter.

Sincerely,

/RA/

Nils J. Diaz

