



Department of Energy
Washington, DC 20585

AUG 18 1989

Robert Browning, Director
Division of High Level
Waste Management
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dear Mr. Browning:

In Mr. Robert Bernero's letter dated March 14, 1989, to Mr. Rousso, he requested the Department of Energy (DOE) to provide comments on the Nuclear Regulatory Commission's (NRC) regulatory strategy, described in SECY-88-285. As part of the strategy the NRC staff presented its thinking on considerations of the appropriateness and timeliness of proceeding with various rulemakings to reduce regulatory and institutional uncertainties. Thirteen topics were proposed for such consideration. Enclosure 1 provides a list of these topics. In this letter, we provide for your consideration our thinking on each of the topics listed in Enclosure 1 with respect to the need for rulemaking or other regulatory approaches, such as issuance of guidance documents, to reduce uncertainties during the licensing process.

Topic 1 is already the subject of an ongoing rulemaking process. It would be prudent and advisable to continue this effort. However, the NRC should await re-promulgation by the Environmental Protection Agency (EPA) of its environmental standards (40 CFR Part 191). Topic 2 should not require rulemaking since Topic 1 will conform 10 CFR Part 60 to the applicable EPA standards. Specific methodologies to demonstrate compliance would be better addressed in general guidance documents instead of through the formal rulemaking process.

Topics 3 through 6 concern the need for further amplification of the meaning and the application of particular terms used in 10 CFR Part 60. A principal benefit of having codified requirements is to provide a stable target during a lengthy period of repository development throughout which significant changes in personnel are to be expected. Thus rulemakings where the "amplification" might be viewed as revision of existing requirements should be used sparingly and approached carefully. Any regulatory guidance developed for Topics 3 through 6 may require considerable discussion to clarify in detail the various circumstances for the use of the subject material. There may be circumstances for which the application of the definition and subsequent amplification of these terms may not be appropriate. Such conditions may require use of alternative approaches to compliance. Since rulemaking is a formal process that is most useful as a vehicle for promulgating new or revised regulatory requirements, it does not lend itself as an optimum process to

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expound the nuances of the meanings of specific terms. Its final product, a rule, may not provide the flexibility needed to address the variety of circumstances that may be encountered during the various stages of the repository program. The development of a regulatory guidance document, such as a regulatory guide (RG) or a technical position (TP), would contain the needed guidance, provide the necessary flexibility, and would require considerably less resources. In addition, draft TPs have been issued by the NRC for three of the four topics (Numbers 3, 4, and 6). Such guidance documents provide a more workable process for interchange of ideas and for reaching a technical consensus on unsettled technical or site-specific details. The development of a guidance document such as a RG or a TP also provides a sufficient level of detail in a timely manner to be useful in its application to the site characterization efforts.

Regarding Topic 7, we note that the recently issued revision to 10 CFR Part 61 concerning disposal of greater-than-Class-C (GTCC) waste recognizes that DOE has the statutory authority for selecting the method for disposal of GTCC waste and provides assurance to DOE that it retains the flexibility to do so under the amended regulation. DOE is presently evaluating alternative disposal options and has not yet selected a preferred method of disposal. To facilitate DOE's selection process, it would be beneficial to establish criteria, by rulemaking, for disposal of GTCC waste in a facility dedicated to disposal of such waste. Regarding criteria for disposal of GTCC waste in a repository, such criteria would be helpful to DOE in selecting the method for disposal of GTCC waste.

There currently are no regulations that provide the requirements pertaining to Topics 8 and 9. A "design basis accident dose limit" is necessary to define the acceptability of facility boundaries and design features with respect to radiological accidents. As you know, DOE will be submitting to NRC a petition for rulemaking on this topic in the near future. The rulemaking process is well suited for developing such new regulations since the various possible values for the dose guideline would be formally evaluated and the basis for the selection of the value which would be published with the final rule, would be clearly documented. With respect to Topic 9, Subpart I of 10 CFR Part 60 has been reserved for emergency planning criteria but none have been published to date. The rulemaking process is an appropriate vehicle to develop the regulatory requirements for emergency planning for the geologic repository via a conforming amendment to Part 60. DOE recommends that such a rulemaking generally adopt the criteria contained in the Final Rule on Emergency Preparedness published on April 7, 1989, (54 FR 1405) for certain fuel cycle and other radioactive material licensees (10 CFR Parts 30, 40, and 70).

Regarding Topic 10, as you are aware, the NRC issued five findings under the 1984 Waste Confidence Decision (WCD) and committed to revisit those findings in five years. Thus the current review of the waste confidence decision is appropriate. Any changes to those findings that were codified as regulations in the first waste confidence decision should be made by rulemaking as part of the current review.

Topic 11 was subject of a recently completed rulemaking proceeding. It was appropriate that this rulemaking was undertaken. The rulemaking referred to in Topic 12 is also now completed. The subject of Topic 13 could be provided more quickly and with more flexibility by a guidance document. The content of license applications have traditionally been specified in regulatory guides. DOE recommends that the NRC staff complete its ongoing efforts to develop a regulatory guide for the format and content of a repository license application, rather than undertake rulemaking. In regard to the threshold for acceptance of the license application, this is well defined in the existing 10 CFR Parts 2 and 60. DOE believes it to be unnecessary to change the existing threshold. In addition, revisions to 10 CFR Part 2 would be beneficial to streamline the licensing process and effectively utilize the benefits of the Licensing Support System, as recommended in our letter dated February 16, 1989.

NRC's SECY-88-285 also listed several regulatory guides and technical positions that have been issued by the staff, as well as those that are being planned. As you know, DOE endorses the use of such guidance documents, and we strongly urge you to direct these efforts towards the development of acceptance criteria that would be used to review the information to be provided in the license application.

In summary, we recommend that ongoing rulemaking be continued on Topics 1, and 10, new rulemaking be initiated on Topics 8 and 9; and guidance documents, either regulatory guides or technical positions, be developed on Topics 2, 3, 4, 5, 6, and 13. In addition, it is recommended that a separate rulemaking be initiated to establish packaging and disposal criteria at a facility dedicated for the disposal of greater-than-Class-C waste. Rulemaking on Topics 11 and 12 has been completed. We also recommend revisions to 10 CFR Part 2 to streamline the licensing process. DOE also encourages the use of regulatory guides and technical positions to identify the acceptance criteria the staff will use in reviewing our license application. The DOE considers that establishment of criteria for disposal of GTCC waste in a geologic repository (Topic 7) would be helpful to DOE in selecting the method for disposal of GTCC waste.

If you wish to discuss this matter further, please contact
Gordon Appel of my staff at 586-1462 or myself at 586-6046.

Sincerely,



FOR Ralph Stein
Associate Director for Systems
Integration and Regulations
Office of Civilian Radioactive
Waste Management

Enclosure: NRC List of Ongoing and Planned Potential Rulemaking
Topics

cc: B.J. Youngblood, NRC
J. Linehan, NRC
R. Loux, State of Nevada
D. Bechtel, Clark County, NV
M. Baughman, Lincoln County, NV
S. Bradhurst, Nye County, NV

ENCLOSURE I

NRC LIST OF ONGOING AND PLANNED
POTENTIAL RULEMAKING TOPICS

Rulemakings to Reduce Regulatory Uncertainties

1. Conform 10 CFR Part 60 to U.S. Environmental Protection Agency High-Level Waste Standard
2. Methodology for Proving Compliance with U.S. Environmental Protection Agency High-Level Waste Standards
3. Further Amplification of the Meaning of the Phrase "Anticipated Processes and Events and Unanticipated Processes and Events used in 10 CFR Part 60
4. Further Amplification of the Meaning of the Phrase the "Disturbed Zone" used in 10 CFR Part 60
5. Further Amplification of the Meaning of the Phrase "Substantially Complete Containment" used in 10 CFR Part 60
6. Further Amplification of the Meaning of the Phrase "Pre-Waste Emplacement Groundwater Travel Time" used in 10 CFR Part 60
7. Establishment of the "Criteria for Containment of Greater-than-Class-C" Low-Level Waste When It is Disposed of in a Deep Geologic Repository
8. Definition of "Design Basis Accident Dose Limit" for Repository Operations
9. Establishment of Emergency Planning Criteria under Subpart 1 of 10 CFR Part 60

Rulemakings to Reduce Institutional Uncertainties

10. Review of the Commission's Findings under Its 1984 Waste Confidence Decision
11. Implementation of the Nuclear Waste Policy Act Provisions Requiring NRC to Adopt DOE's Environmental Impact Statement
12. Licensing Support System
13. Revisions of the Content of License Application and the Threshold for Acceptance of the License Application