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

June 4, 1985

OFFICE OF THE
SECRETARY

Mr. Robert L. Loux, Director
Nuclear Waste Project Office
Office of the Governor
Capitol Complex
Carson City, Nevada 89710

WM Record File
105.2.1
101.4
102.3
106.1

WM Project _____
Docket No. _____
PDR _____
LPDR _____

Distribution:
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(Return to WM, 623-SS) 23

Dear Mr. Loux:

This is in response to your letter of April 16, 1985 in which you requested a meeting with the Commission to comment on the proposed amendment to 10 CFR Part 60, "Disposal of High-Level Radioactive Waste in Geologic Repositories: Amendments to Licensing Procedures." These proposed amendments were published for comment in the Federal Register on January 17, 1985 (50 FR 2579). In your letter, you indicated that such a meeting would provide affected states and Indian tribes with a good opportunity to discuss their concerns directly with the Commission.

The Commission appreciates your concern that the issues in this rulemaking be fully aired and that the public be given adequate opportunity to comment. However, the Commission believes that in this particular rulemaking it has provided adequate opportunity for public comment; indeed, the Commission, in recognition of the possibility of heightened interest in the proposed changes in Part 60, has gone beyond the procedures it customarily follows in promulgating a rule. These additional procedures included the provision of a preliminary draft of the proposed rule to states and other interested persons during the spring of 1983 and the Commission's staff discussion of this preliminary draft with states and other interested persons at a meeting held in Dallas, Texas in August 1983. Following that meeting, the staff prepared a proposed rule which it submitted to the Commission in June 1984. At the same time, the proposed rule was made available to interested states. Comments were received on the proposed rule and the staff prepared a second paper in November 1984 which considered those comments. More recently, the proposed rule was published in the Federal Register on January 17, 1985 and comments were solicited and received. Thus, it is clear that the Commission has actively sought and obtained comments from states and other interested persons on several occasions.

Moreover, the Commission does not generally hold meetings as part of its notice and comment rulemaking proceedings but rather solicits written comments. The Commission conducts such meetings only when it is clear that the opportunities for written comments have been inadequate. This is not the case here for the reasons discussed above. Finally, if such a

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public meeting were to be found necessary, simple fairness would require the Commission to invite all commenters and not just affected states and tribes.

For the above reasons, the Commission has decided that the meeting you requested is not advisable. The Commission appreciates the concern and interest of the State of Nevada on this important matter. The Commission will give all of the comments which you submitted on the proposed rule full consideration in our deliberations on the final rule.

Commissioner Asselstine disagrees with this response. He believes that a public meeting with all interested parties on these very important rule changes is warranted.

Sincerely,

Original Signed by
Samuel J. Chilk

Samuel J. Chilk
Secretary

Identical letters sent to:

Mr. Melvin R. Sampson, Vice Chairman
Yakima Tribal Council
Yakima Indian Nation
Confederated Tribes and Bands
P.O. Box 151
Toppenish, Washington 98948

Mr. Steve Frishman, Director
Nuclear Waste Programs Office
Office of the Governor
State Capitol
Austin, Texas 78711

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DATE	6/3/85						

Mr. Robert L. Loux, Director
Nuclear Waste Project Office
Office of the Governor
Capitol Complex
Carson City, Nevada 89710

Dear Mr. Loux:

This is in response to your letter of April 16, 1985 in which you requested a meeting with the Commission to comment on the proposed amendments to 10 CFR Part 60, "Disposal of High-Level Radioactive Waste in Geologic Repositories: Amendments to Licensing Procedures." These proposed amendments were published for comment in the Federal Register on January 17, 1985 (50 FR 2579). In your letter, you indicated that such a meeting would provide affected states and Indian tribes with a good opportunity to discuss their concerns directly with the Commission.

The Commission appreciates your concern that the issues in this rulemaking be fully aired and that the public be given adequate opportunity to comment. However, the Commission believes that in this particular rulemaking, it has provided adequate opportunity for public comment. Indeed, the Commission has gone beyond the procedures it customarily follows in promulgating a rule. The Commission notes that a preliminary draft of the proposed rule was provided to states and other interested parties during the spring of 1983. The Commission's staff discussed this preliminary draft with states and other interested parties at a meeting held in Dallas, Texas in August 1983. Following that meeting, the staff prepared a proposed rule which it submitted to the Commission (SECY-84-263) in June 1984. At the same time, the proposed rule was made available to interested states. Comments were received on the proposed rule and the staff prepared a second paper (SECY-84-263A) in November 1984 which considered those comments. More recently, the proposed rule was published in the Federal Register on January 17, 1985 and comments were solicited and received. Thus, it is clear that the Commission has had the benefit of comments from states and other interested parties on several occasions and has actively sought additional comments. We believe the record is now fully developed and that it is our responsibility to make a judgment in the light of that record as soon as may be practicable.

A second point that should be noted is that the Commission does not generally hold meetings as part of its notice and comment rulemaking proceedings but rather solicits written comments. The Commission would find it difficult to

DFC : : : : : : :
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conduct the type of meeting you proposed in which participation would be restricted to affected states and tribes. As a general practice, the Commission must be mindful of the importance of all of the commenters and assure itself that all parties are afforded the same opportunity for offering comments. A meeting conducted to solicit further views of a single party or several parties without all parties having the same opportunity for comment would not be prudent.

For these reasons, the Commission has decided that the meeting you requested is not advisable. The Commission appreciates the concern and interest of the State of Nevada on this important matter. The Commission will give all of the comments which you submitted on the proposed rule full consideration in our deliberations on the final rule.

Sincerely,

Nunzio J. Palladino
Chairman

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- JWolf
- MBridgers
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- JHoffman
- WJDircks

*See previous concurrence

by telecon
 RES FCostanzi 85/05/
 ELD 85/05/06

"No legal objection"
 per telecon
 JWolf + ERegnier
 5/6/85

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For these reasons, the Commission has decided that a meeting at this time is not advisable. The Commission appreciates the concern and interest of the State of Nevada on this important matter. The Commission will give all of the comments which you submitted on the proposed rule full consideration in our deliberations on the final rule.

Sincerely,

Nunzio J. Palladino
Chairman

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