

April 19, 2004

Ms. Judy Treichel
Nevada Nuclear Waste Task Force
4550 West Oakey Boulevard, Suite 111
Las Vegas, NV 89102

SUBJECT: REVIEW OF YUCCA MOUNTAIN GEOLOGIC REPOSITORY OPERATIONS
AREA FACILITIES

Dear Ms. Treichel:

This letter is in response to questions you raised at the February 4, 2004, technical exchange between the U.S. Nuclear Regulatory Commission (NRC) and the U.S. Department of Energy (DOE) and those raised with NRC staff on March 4, 2004. Specifically, you questioned whether NRC would review the aging facility described at the exchange as part of the license application (LA) for a proposed geologic repository at Yucca Mountain, Nevada, or as a discrete facility under 10 CFR Part 72. In addition, you requested the staff to provide the NRC's criteria for making that decision. Your question arose in response to DOE's overview presentation on the surface facility design that included an aging facility apart from the waste handling building, but still on the site, that would allow the fuel to cool before repackaging and emplacement in the repository. You requested that NRC distinguish between an aging facility licensed as part of a repository under 10 CFR Part 63, and spent fuel storage facilities licensed under 10 CFR Part 72. You also expressed concern that DOE might try to use a large surface aging facility to circumvent the statutory limitation of 70,000 metric tons of waste it could receive at Yucca Mountain before a second repository is in operation.

As a general matter, it is the applicant who initially identifies the type of license for which to apply based on the nature and scope of activities it proposes to conduct. It is also the applicant who must demonstrate how structures, systems, and components described in the application meet the applicable regulatory requirements. The NRC will then review the application in accordance with applicable regulatory requirements to decide whether to issue the applicant a license. It is our understanding that DOE intends to seek construction authorization and a license to receive and possess source, special nuclear, or byproduct material at a proposed geologic repository at Yucca Mountain, in accordance with NRC's regulations in 10 CFR Part 63. Part 63 contemplates that a proposed repository design may include surface facilities for the receipt, handling, packaging, and storage of waste. NRC would evaluate a surface aging facility incident to waste handling activities, if included in the proposed repository design.

Section 141(g) of the Nuclear Waste Policy Act explicitly prohibits the co-location of the repository and monitored retrievable storage facilities. NRC regulations reflect this prohibition in 10 C.F.R. § 72.96, which prohibits the location of a monitored retrievable storage facility in any state in which there is a site approved for site characterization for a high-level radioactive waste repository, and also prohibits an independent spent fuel storage installation owned and operated by DOE from being located at any candidate site for a high-level radioactive waste

repository. However, as noted above, Part 63 contemplates both surface and subsurface components as part of the Geologic Repository Operations Area (GROA).

A surface aging facility, incident to waste handling activities is different than a facility licensed and regulated under Part 72. Interim storage facilities, licensed under Part 72, provide safe, temporary storage of waste. A surface aging facility will likely not be designed merely for temporary storage, but will serve other functions, which are integral to the logistics of waste handling for the purposes of permanent storage in the repository.

With respect to your concern about the statutory limit of 70,000 metric tons set forth in section 114(d) of the Nuclear Waste Policy Act, the Commission addressed this limit, directly incorporating the relevant statutory provision in its regulations, in 10 C.F.R. § 63.42 (d). This section states that any Part 63 license shall include a license condition limiting the quantity of waste at the first proposed repository in accordance with section 114(d) of the Nuclear Waste Policy Act until a second repository is in operation, whether or not these provisions are expressly set forth in the license.

The NRC will review the proposed LA, in its entirety, in accordance with the requirements of 10 CFR Part 63. If the LA includes a surface aging facility, NRC will review that facility to determine whether it complies with 10 CFR Part 63. In that event, the NRC's review of the repository would include design, construction and operation of the aging facility and its integration with other facilities at the repository.

Thank you for your interest.

Sincerely,

/RA/

C. William Reamer, Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety
and Safeguards

cc: See attached list

repository. However, as noted above, Part 63 contemplates both surface and subsurface components as part of the Geologic Repository Operations Area (GROA).

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Thank you for your interest.

Sincerely,

/RA/

C. William Reamer, Director
 Division of High-Level Waste Repository Safety
 Office of Nuclear Material Safety
 and Safeguards

cc: See attached list

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Letter or Memorandum to J. Treichel from C.W. Reamer, dated: April 19, 2004

cc:

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