



Department of Energy
Office of Civilian Radioactive Waste Management
Office of Repository Development
1551 Hillshire Drive
Las Vegas, NV 89134-6321

QA: N/A
Project No. WM-00011

JUN 14 2004

OVERNIGHT MAIL

ATTN: Document Control Desk
Director, Division of High-Level Waste
Repository Safety
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852-2738

U.S. DEPARTMENT OF ENERGY (DOE) SUBMITTALS OF ADDITIONAL INFORMATION TO SUPPORT THE U.S. NUCLEAR REGULATORY COMMISSION'S (NRC) FINDING ON ISSUANCE OF A LICENSE TO RECEIVE AND POSSESS SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE AT A YUCCA MOUNTAIN, NEVADA, REPOSITORY

As you are aware, DOE currently anticipates submitting a license application (LA), consisting of General Information (GI) and a Safety Analysis Report (SAR), in December 2004. In accordance with 10 CFR 63.21(a), DOE will submit an LA that is as complete as possible in light of information that is reasonably available at the time of tendering. The purpose of this letter is to inform you that DOE intends to submit additional information and detail beyond that contained in the original tender with respect to its Physical Protection Plan (GI Section 3) and the Material Control and Accounting Program (GI Section 4).

The initial tender will be fully responsive to the requirements of 10 CFR Part 63 and the guidance contained in the Yucca Mountain Review Plan (YMRP), and go beyond simple commitments to develop the plans and program by describing how the Physical Protection Plan and Material Control and Accounting Program will be developed. Consistent with 10 CFR 63.24, DOE will transmit revisions to the GI and SAR intended to add additional detail to the material previously included in the initial tendering, and in subsequent revisions, in a timely manner as such additional detail becomes available.

We believe this approach for the Physical Protection Plan and the Material Control and Accounting Program complies with the regulatory requirements of 10 CFR Part 63, the expectations of NRC as expressed in the statement of considerations accompanying the promulgation of the final 10 CFR Part 63, YMRP, and the NRC licensing precedent.

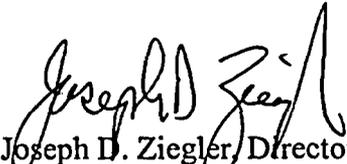
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In the statement of considerations accompanying the promulgation of 10 CFR Part 63, the NRC noted the multi-staged nature of the licensing proceeding and the fact that the regulations permit flexibility in making licensing decisions commensurate with the amount and level of detail of information appropriate at a given stage of the proceeding (66 *Federal Register* 55732, 55738, November 2, 2001). This concept was carried forward and reflected in the final YMRP. In response to public comment on the timing of DOE's submission of the Physical Protection Plan, NRC indicated in the preamble accompanying the final YMRP that DOE would be expected to submit a baseline Physical Protection Plan for NRC technical review after the issuance of the construction authorization (68 *Federal Register* 45086, 45090, July 31, 2003). This is consistent with NRC licensing practice in other contexts, where it is understood that the details of the Physical Protection Plan and Material Control and Accounting program cannot be fully developed until construction activities and design are sufficiently mature for NRC to perform a technical review of them. In the same response to comment document, the NRC also clarified its requirements for what would be required upon initial tender of the LA with respect to DOE's Material Control and Accounting Program (68 *Federal Register* 45089).

Accordingly, DOE will submit the constituent parts of the Physical Protection Plan and the Material Control and Accounting Program to NRC as they are developed. The DOE currently anticipates that all parts of both plans will be submitted no later than six months prior to submittal of the updated LA, which is currently anticipated to be submitted in December 2008.

There are no new regulatory commitments in the body this letter. Please direct any questions concerning this letter to Daniel W. Kane at (702) 794-5511 or e-mail dan_kane@ymp.gov. Should the DOE's currently anticipated dates for these submittals change, I will inform you of same. Thank you.


Joseph D. Ziegler, Director
Office of License Application & Strategy

OLA&S:DWK-1112

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cc:

A. C. Campbell, NRC, Rockville, MD
L. L. Campbell, NRC, Rockville, MD
D. D. Chamberlain, NRC, Arlington, TX
G. P. Hatchett, NRC, Rockville, MD
R. M. Latta, NRC, Las Vegas, NV
J. D. Parrott, NRC, Las Vegas, NV
D. B. Spitzberg, NRC, Arlington, TX
N. K. Stablein, NRC, Rockville, MD
B. J. Garrick, ACNW, Rockville, MD
H. J. Larson, ACNW, Rockville, MD
W. C. Patrick, CNWRA, San Antonio, TX
Budhi Sagar, CNWRA, San Antonio, TX
J. R. Egan, Egan & Associates, McLean, VA
J. H. Kessler, EPRI, Palo Alto, CA
M. J. Apted, Monitor Scientific, LLC, Denver, CO
Rod McCullum, NEI, Washington, DC
W. D. Barnard, NWTRB, Arlington, VA
R. R. Loux, State of Nevada, Carson City, NV
Pat Guinan, State of Nevada, Carson City, NV
Alan Kalt, Churchill County, Fallon, NV
Irene Navis, Clark County, Las Vegas, NV
George McCorkell, Esmeralda County, Goldfield, NV
Leonard Fiorenzi, Eureka County, Eureka, NV
Michael King, Inyo County, Edmonds, WA
Andrew Remus, Inyo County, Independence, CA
Mickey Yarbrow, Lander County, Battle Mountain, NV
Spencer Hafen, Lincoln County, Pioche, NV
Linda Mathias, Mineral County, Hawthorne, NV
L. W. Bradshaw, Nye County, Pahrump, NV
Mike Simon, White Pine County, Ely, NV
R. I. Holden, National Congress of American Indians, Washington, DC