



OFFICE OF THE GOVERNOR
AGENCY FOR NUCLEAR PROJECTS

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June 22, 2004

C. William Reamer, Director
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards
US Nuclear Regulatory Commission
Washington DC 20555

Dear Mr. Reamer:

Thank you for your helpful June 14th letter regarding Nevada's concern that the Department of Energy (DOE) will rely improperly on drip shields to meet Nuclear Regulatory Commission's (NRC) Yucca Mountain individual dose standards. I take the second paragraph of your response to say that for NRC to credit the long-term protection afforded by a DOE repository design element, the NRC must find there is reasonable assurance that the design element will in fact be installed before repository closing. It is only common sense that you would do so, but we are pleased to have the point confirmed.

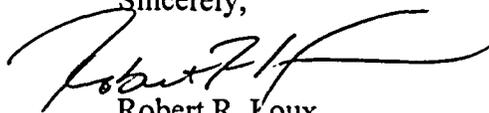
Such assurance cannot, however, rely on the "binding conditions" mentioned in the next paragraph of your letter when the conditions are supposed to apply as far off in the future as 100 to 300 years after licensing. It is all very well to write—in analogy with more common regulatory situations—that "failure to comply with license conditions would be subject to enforcement action." But here we are dealing with a unique situation, one in which the uncertainties, compounded into the distant future, are so great as to render hollow the concepts of binding conditions and enforcement.

Even in the nearer term it is unclear what meaningful enforcement action NRC can take once DOE has placed all the waste underground. What can NRC realistically do if DOE decides at that point it is too much trouble or too expensive to install drip shields and cancels its plans to put them in? The only tenable position for NRC at the licensing stage is to permit DOE to include drip shields in its safety calculations if the Department commits to install them when it replaces the waste packages or shortly thereafter, but

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not otherwise. I look forward to continuing our discussion of this issue. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert R. Loux". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert R. Loux
Executive Director

cc: Joseph Egan
Marta Adams
