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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

November 18, 1997

Mr. Dan Kane
Nuclear Licensing Team Leader
U.S. Department of Energy
Office of Waste Acceptance, Storage
and Transportation
Office of Civilian Radioactive
Waste Management
1000 Independence Avenue, SW
Washington, D.C. 20585

SUBJECT: REVIEW OF DEPARTMENT OF ENERGY'S (DOE's) CENTRALIZED INTERIM
STORAGE FACILITY TOPICAL SAFETY ANALYSIS REPORT (TSAR)
(TAC NO. L22327)

Dear Mr. Kane:

During conversations with Nuclear Regulatory Commission staff, you requested an explanation for delays associated with the review of your application for a Centralized Interim Storage Facility (CIS). The purpose of this letter is to explain the reason for the staff's delay in commencing this review.

The Energy Reorganization Act (ERA) and Section 178 of the Atomic Energy Act require that NRC actions be performed in a manner that is "conflict-of-interest" free. Conflict of interest in technical and research assistance has been an issue since the formation of NRC and DOE as separate independent agencies. The ERA grants responsibility for the existing national laboratories to DOE, and regulatory responsibilities over various aspects of the nuclear fuel cycle to NRC, creating a need to ensure conflict-free support for NRC regulatory actions pertaining to DOE. Conflict of interest is a specific issue with respect to CIS because DOE is an applicant in several licensing proceedings before the Commission, specifically, the TMI-2 Independent Spent Fuel Storage Installation (ISFSI) at Idaho National Engineering and Environmental Laboratory and the Fort St. Vrain (FSV) ISFSI license transfer. Since some contractors, to whom we might otherwise look for contracting support in reviewing the application, are also DOE contractors, an apparent conflict of interest exists.

In addition, a direct relationship can be drawn between the TMI-2 ISFSI and the Yucca Mountain Repository Project since the FSV waste will eventually be placed in the permanent geologic repository. It was determined early in the repository program that a potential conflict of interest existed if NRC staff and DOE both used the national laboratories for work associated with the repository program. The way the laboratories have cooperated on Yucca Mountain work makes it extremely difficult to find a completely conflict-free situation where one or more laboratories and Yucca Mountain are involved.

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Finally, it should be noted that any organization that is currently performing substantially the same work for DOE as they would perform for NRC cannot be considered for technical support contracts for DOE application reviews. For example, if Oak Ridge National Laboratory were to perform a review of a spent

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fuel system or facility, they (the entire laboratory) would be precluded from assisting the NRC in a similar review, even if it is not a review of the same system or facility. This type of conflict applies to the entire organization, even to departments located at different sites.

The DOE licensing requests, mentioned above, have eliminated from further consideration several commercial contractors and all of the DOE National Labs resulting in an unavoidable delay in the start of the CIS safety review. However, conflict-free assistance has now been secured for the CIS TSAR and the staff anticipates issuing an RAI during the first calendar quarter of 1998.

Sincerely,

[original signed by /s/]

Michael G. Raddatz, Senior Project Manager
Spent Fuel Licensing Section
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

Docket 72-21

cc: Mr. Ronald Milner
Mr. Christopher Kouts
Mr. Lake Barrett

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