DISCLAIMER: This document exists to establish the concurrence chain for the subsequent e-mail, ML090490821

Robert Steinhaus
Lawrence Livermore National Laboratory (Retired)
steinhausq@yahoo.com

SUBJECT: RESPONSE TO JANUARY 24, 2009 E-MAIL, "REQUEST TO SUBMIT PROOF FOR RULING ON CALIFORNIA RESOURCE CODE 25524.2 (SECTION A)"

Dear Mr. Steinhaus,

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your January 24, 2009, e-mail to the NRC Chairman. California Public Resource Code § 25524.2 requires "The Commission," most likely the California Energy Commission, to make a finding that a technology or means for disposal of high-level nuclear waste has been developed and approved by the authorized agency of the United States. NRC cannot make this finding for the California Energy Commission. Further, the State of California must interpret its statute to determine whether NRC is the "authorized agency" of the United States to make this approval - NRC also cannot make this determination for California. Your request would be more appropriately made to the State of California.

In regards to your second question, although NRC keeps cognizant of the industry advancement in spent nuclear fuel recycling technologies, it does not validate nor approve engineering calculations, drawings, or the technology for transmutation and incineration of high-level nuclear waste, independent of a formal rulemaking action or a review of a specific license application. NRC, through the Office of Nuclear Material Safety and Safeguards, is responsible for regulating the safe and secure production of nuclear fuel used in nuclear reactors, storage of spent nuclear fuel, radioactive material transportation, and disposal of high-level radioactive waste and spent nuclear fuel. NRC is also responsible for regulation and licensing of recycling technologies intended to reduce the amount of waste to be disposed of through geologic disposal and to reduce proliferation concerns. To develop an appropriate regulatory framework, NRC interacts with the U.S. Department of Energy and stakeholders during development, demonstration, and potential deployment of new advanced technologies that recycle nuclear fuel in a proliferation-resistant manner. The regulatory framework includes processes such as licensing, inspection, assessment of licensee performance, events analysis, and enforcement to ensure that the technology can be safely and securely implemented commercially in the United States.

Thank you for your inquiry. You may be interested in participating by phone or in person in a public meeting we will be holding on Thursday, February 26, 2009, to discuss The Nuclear Energy Institute white paper on "Reprocessing Spent Nuclear Fuel." If you have any questions regarding our response, please contact Mr. Hipolito Gonzalez. Mr. Gonzalez may be reached at 301-492-3141, e-mail: hipolito.gonzalez@nrc.gov.

DISCLAIMER: This document exists to establish the concurrence chain for the subsequent e-mail, ML090490821

Robert Steinhaus
Lawrence Livermore National Laboratory (Retired)
steinhausq@yahoo.com

SUBJECT: RESPONSE TO JANUARY 24, 2009 E-MAIL, "REQUEST TO SUBMIT PROOF FOR RULING ON CALIFORNIA RESOURCE CODE 25524.2 (SECTION A)"

Dear Mr. Steinhaus,

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your January 24, 2009, e-mail to the NRC Chairman. California Public Resource Code § 25524.2 requires "The Commission," most likely the California Energy Commission, to make a finding that a technology or means for disposal of high-level nuclear waste has been developed and approved by the authorized agency of the United States. NRC cannot make this finding for the California Energy Commission. Further, the State of California must interpret its statute to determine whether NRC is the "authorized agency" of the United States to make this approval - NRC also cannot make this determination for California. Your request would be more appropriately made to the State of California.

In regards to your second question, although NRC keeps cognizant of the industry advancement in spent nuclear fuel recycling technologies, it does not validate nor approve engineering calculations, drawings, or the technology for transmutation and incineration of high-level nuclear waste, independent of a formal rulemaking action or a review of a specific license application. NRC, through the Office of Nuclear Material Safety and Safeguards, is responsible for regulating the safe and secure production of nuclear fuel used in nuclear reactors, storage of spent nuclear fuel, radioactive material transportation, and disposal of high-level radioactive waste and spent nuclear fuel. NRC is also responsible for regulation and licensing of recycling technologies intended to reduce the amount of waste to be disposed of through geologic disposal and to reduce proliferation concerns. To develop an appropriate regulatory framework, NRC interacts with the U.S. Department of Energy and stakeholders during development, demonstration, and potential deployment of new advanced technologies that recycle nuclear fuel in a proliferation-resistant manner. The regulatory framework includes processes such as licensing, inspection, assessment of licensee performance, events analysis, and enforcement to ensure that the technology can be safely and securely implemented commercially in the United States.

Thank you for your inquiry. You may be interested in participating by phone or in person in a public meeting we will be holding on Thursday, February 26, 2009, to discuss The Nuclear Energy Institute white paper on "Reprocessing Spent Nuclear Fuel." If you have any questions regarding our response, please contact Mr. Hipolito Gonzalez. Mr. Gonzalez may be reached at 301-492-3141, e-mail: hipolito.gonzalez@nrc.gov.

DISTRIBUTION:
HLWRS r/f, NMSS r/f, Tison Campbell (OGC), Marian Zobler (OGC),
Kelli Markham (NMSS/FCSS), Alex Murray (NMSS/FCSS), Gregory Morell (EDO)

G20090047/LTR-09-0031/EDATS: SECY-2009-0045, ML090410749

OFFICE	NMSS/HLWRS	OGC BY E-MAIL	NMSS/HLWRS	NMSS BY FAX	NMSS
NAME	HGonzalez	TCampbell	LKokajko	EKraus	MWeber
DATE	02/11/09	02/11/09	02/11/09	02/13/09	02/18/09

OFFICIAL RECORD COPY