



NUCLEAR ENERGY INSTITUTE

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August 26, 2009

Mr. Brian J. Benney
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Project Management Branch Section B
Division of High-Level Waste Repository Safety
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
EBB-2B2
Washington, DC 20555-0001

Subject: Nuclear Energy Institute feedback on the NRC clarification call with the U.S. Department of Energy regarding its response to a Request for Additional Information-Volume 4, Chapter 2.5.1, Set 1 (Quality Assurance Program), held on July 28, 2009

Project Number: 689

Dear Mr. Benney:

The Nuclear Energy Institute (NEI),¹ on behalf of the nuclear energy industry, would like to take this opportunity to provide feedback on the NRC clarification call held with the U.S. Department of Energy (DOE) on July 28, 2009, to discuss DOE's response (ML090080758) to the U.S. Nuclear Regulatory Commission (NRC) request for additional information (RAI) #9, Set 1 (ML083080108), from the Yucca Mountain Safety Evaluation Report Volume 4, Chapter 2.5.1 (Quality Assurance Program).

NEI commends the NRC for making the phone calls with the NRC and DOE regarding RAIs related to the Yucca Mountain License Application open to the public. We routinely take advantage of the opportunity to remain informed concerning the status of the NRC's review through these calls. We were particularly interested in the subject follow-on phone call because it addressed the relationship between quality assurance programs at Yucca Mountain and those at commercial nuclear power plants. Industry is concerned over the statements by the NRC during this call that seem to imply that the DOE should provide oversight of commercial nuclear utilities' Quality Assurance Programs (QAP). We believe that such

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

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oversight is both beyond the DOE's authority and unnecessary. Specifically, it would be beyond the DOE's scope of activities, per the standard contracts with utilities as codified in 10 CFR 961.11 for the DOE to conduct such oversight.

First, NRC regulations in 10 CFR Part 63.1 apply to the DOE only with respect to operation "at Yucca Mountain" and "do not apply to any [other] activity licensed [by the NRC]." Further, the NRC regulations have been established deliberately to align Quality Assurance criteria 1 through 18, in 10 CFR Parts 50, 63, 71 and 72, with each other to assure consistency. In the Yucca Mountain Review Plan, NUREG-1804, Rev. 2, the NRC staff has consolidated 10 CFR Part 63 criteria 19 through 22 (which are unique to Yucca Mountain repository), into specific acceptance criteria 3, 8 and 10, in order to maintain consistency with 10 CFR Part 50, Appendix B (see 68 FRN 45102, dated July 31, 2003). Specifically, Acceptance Criterion 19, "Software," and Acceptance Criterion 21, "Scientific Investigation," have been consolidated into Acceptance Criterion 3, "Design Control"; Acceptance Criterion 20, "Sample Control," has been consolidated into Acceptance Criterion 8, "Identification and Control of Materials, Parts, and Components"; and Acceptance Criterion 22, "Field Surveys," has been consolidated into Acceptance Criterion 10, "Inspection."

Because the QA principles applied at the repository substantively conform to those applied at reactors, there is no reason for the NRC to expect that DOE oversight of reactor QA program compliance to 10 CFR Part 63 would add any real value, and there is no regulatory basis for such any such expectation. Imposing this expectation through the back door of DOE oversight would create a significant unnecessary administrative burden on both the DOE and utilities and would go far beyond the originally intended and defined scope of 10 CFR Part 63.

Fortunately, there is no need for the NRC to venture down this unnecessarily complex path. As stated in the subject RAI response (ML090080758), the DOE properly expects that utilities will continue to maintain and implement a QAP consistent with NRC regulations, without performing any audits. We agree with this response and believe that there is no need for any such audits, since they would be an improper and unnecessary burden to the utilities and the DOE, they would not add any value, and they are not provided for by existing contracts between utilities and the DOE. Each utility has its own QAP reviewed and approved by the NRC in accordance with existing regulations and audits its contractors via Nuclear Procurement Issues Committee-type audits. The utility QAP is subject to the NRC inspection and enforcement requirements.

In addition, the DOE Office of Civilian Radioactive Waste Management Quality Assurance Requirements and Description program implementation has been evaluated twice in accordance with the Nuclear Industry Evaluation Program objectives and performance criteria and has been found effective.

In conclusion, we are confident the NRC regulations provide a high standard of safety and ensure that each utility QAP is established and implemented effectively. These programs, as well as the program in place at Yucca Mountain, have been designed, in accordance with NRC regulations, to be consistent and

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this consistency has been, and can continue to be, independently verified. Therefore, there is no need for the DOE to perform independent audits of the commercial nuclear utilities' activities.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney McCullum". The signature is stylized and somewhat cursive.

Rodney McCullum

c: Mr. Lawrence E. Kokajko, U.S. Nuclear Regulatory Commission
Mr. Jeff Williams, U.S. Department of Energy
Mr. Mike Ulshafer, U.S. Department of Energy