

January 7, 1981

The Honorable C. Worth Bateman
Acting Under Secretary of Energy
Washington, D.C. 20545

Dear Mr. Bateman:

As indicated in Chairman Ahearne's October 20, 1980 letter to Secretary Duncan, the Commission is concerned that DOE has limited the scope of its staff's activities relative to the cleanup at TMI-2, specifically, that DOE has not included in their planning, immobilization at existing DOE facilities of high specific activity wastes which are anticipated to be generated from the cleanup.

NRC understands that your staff has raised questions about accepting these wastes for processing and storage at DOE facilities, even though experienced staffs and suitable technology or systems appear to be available at the existing DOE high level waste handling and processing facilities, and the required immobilization steps are beyond the current capabilities of Metropolitan Edison Company. The DOE questions, as expressed to our staff, center on the applicability of NRC licensing requirements which might be associated with transfer of these high specific activity materials from Metropolitan Edison Company, to a DOE facility. Based upon our understanding of the needed activities and the resources and facilities available to you to carry out these activities, NRC licensing requirements should not apply.

As you know, licensing authority with respect to DOE waste management facilities is derived from section 202(3) of the Energy Reorganization Act of 1974. Under that provision, the Commission exercises licensing authority as "facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under [the Atomic Energy Act] term "high-level radioactive wastes" has been used in the past to refer to spent fuel and reprocessing waste. We would not rule out the term's application to wastes which present comparable hazards, possibly including those from TMI-2. However, even if the materials are deemed to be "high-level radioactive wastes," NRC would have no jurisdiction over the DOE facilities at which they are stored (or disposed of) unless those facilities are used primarily for receipt and storage of commercial wastes. If the Department were to take custody of the TMI-2 waste, we anticipate that it would be stored at a location having some other primary use, and accordingly NRC licensing would not be required by law.

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We note that the material would need to be processed, at some point, to make it suitable for disposal. It is our position that such processing is not encompassed by the terms "receipt and storage," so that the facilities in which processing activities were performed would not be subject to licensing under section 202(3).

Please contact me if you wish to discuss this matter further.

Sincerely,

(Signed) William J. Dircks

William J. Dircks
Executive Director for Operations

Distribution:
Central Files 50-320
BJSnyder
HRDenton
LBarrett
EGCase
RBrowning
LChandler
TM1 R/F
TMIS R/F

Lay
ED 1372
ED R/F
W J Dircks
J. Down

OFFICE	TMIPQ:ARR	NRR	NRR	NMSS	ELD	EDO: <i>JD</i>
SURNAME	BJSnyder	EGCase*	HRDenton*	RBrowning*	LChandler*	
DATE	1/6/87	*See Previous concurrence				1/6/87

FOR: The Commissioners

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: PROPOSED LETTER TO DOE SECRETARY DUNCAN RE: TMI-2
HIGH SPECIFIC ACTIVITY WASTES

PURPOSE: The proposed letter to DOE Secretary Duncan is in response to the request made by Chairman Ahearne on December 19.

DISCUSSION: The attached letter proposes a Commission position that NRC licensing would not be imposed on TMI-2 high specific activity wastes which were transferred to the control of DOE at a suitable DOE waste handling and processing facility.

RECOMMENDATION: That the Commission approve the proposed letter.

William J. Dircks
Executive Director for Operations

Enclosure:
Proposed ltr to DOE Secretary Duncan
from Chairman Ahearne

Office: TMI/DOE/NRR	NRR	NRR	EDO	CLASS	ELD
BY PHONE	EGC	HRDenton		RE Downing	L CHANDLER
DATE: 12/22/80	012/5/80	012/17/80	012/ /80	12/27/80	12/28/80

The Honorable Charles W. Duncan
Secretary of Energy
Washington, D.C. 20545

Dear Mr. Secretary:

As indicated in my October 20, 1980 letter to you, the Commission is concerned that DOE has limited the scope of its staff's activities relative to the cleanup at TMI-2, specifically, that DOE has not included in their planning, immobilization at existing DOE facilities of high specific activity wastes which are anticipated to be generated from the cleanup.

The Commission understands that your staff has raised questions about accepting these wastes for processing and storage at DOE facilities, even though experienced staffs and suitable technology or systems appear to be available at the existing DOE high level waste handling and processing facilities, and the required immobilization steps are beyond the current capabilities of Metropolitan Edison Company. The DOE questions, as expressed to our staff, center on the applicability of NRC licensing requirements which might be associated with transfer of these high specific activity materials from Metropolitan Edison Company, to a DOE facility. Based upon our understanding of the needed activities and the resources and facilities available to you to carry out these activities, NRC licensing requirements should not apply.

As you know, our relevant licensing authority is contained in section 202(3) of the Energy Reorganization Act of 1974. Under that provision, the Commission exercises licensing authority as to DOE "facilities used primarily for the

receipt and storage of high-level radioactive wastes resulting from activities licensed under [the Atomic Energy Act]." The term "high-level radioactive wastes" has been used in the past to refer solely to spent fuel and reprocessing waste. We would not rule out the term's application to wastes which present comparable hazards, possibly including those from TMI-2. However, even if the materials are deemed to be "high-level radioactive wastes," NRC would have no jurisdiction over the DOE facilities at which they are stored (or disposed of) unless those facilities are used primarily for receipt and storage of commercial wastes. The Commission has stressed, in a Report to Congress (excerpt attached), that if this condition is not satisfied, the DOE facilities are exempt from NRC licensing. If the Department were to take custody of the TMI-2 waste, we anticipate that it would be stored at a location having some other primary use, and accordingly NRC licensing would not be required by law.

We note that the material would need to be processed, at some point, to make it suitable for disposal. We have taken the position, in the Report to Congress referred to above, that such processing is not comprehended by the terms "receipt and storage," so that the facilities in which processing activities were performed would not be subject to licensing under section 202(3).

I wish to reiterate the suggestion made in my October 20 letter, that we meet soon to discuss this matter, in the context of the above, and the position taken by the House Appropriations Committee.

Sincerely

John F. Ahearne
Chairman

Enclosure: Excerpt to NUREG-0572

Regulation of Federal Radioactive Waste Activities

Report to Congress on Extending the
Nuclear Regulatory Commission's Licensing or
Regulatory Authority to Federal Radioactive Waste
Storage and Disposal Activities

Manuscript Completed: February 1979
Date Published: September 1979

Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555



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4.0 OPTIONS FOR EXTENDING NRC AUTHORITY

Introduction

Most Federal radioactive waste storage and disposal activities are conducted by DOE and are not now subject to the authority of NRC because DOE is largely license exempt. Congress has directed that the Commission study the possibility of extension of its licensing and regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority. In addition, Senators Hart and Domenici have requested that the study identify and discuss various options available for such extension of NRC authority, including a discussion of the likely characteristics of the Commission's licensing or regulatory program. The first two parts of this section will describe the existing authority of the Commission over radioactive waste storage and disposal, and will set forth the federal radioactive waste management activities not presently subject to NRC jurisdiction. The third part will describe certain radioactive waste management activities which come within the jurisdiction of the Environmental Protection Agency. In the fourth part, a number of possible options for extending NRC regulatory and licensing authority in this area will be presented, with a description of the likely characteristics of the regulatory program under each option.

4.1 Existing Authority of NRC Over Waste Storage and Disposal

Atomic Energy Act of 1954

The Commission's authority with regard to waste management under the Atomic Energy Act of 1954 stems from its authority to regulate and license the possession and use of byproduct, source, and special nuclear materials.

Energy Reorganization Act of 1974

DOE is presently not subject to NRC licensing authority except as provided in Section 202 of the Energy Reorganization Act of 1974 and in the Uranium Mill Tailings Radiation Control Act of 1978. Two subsections of Section 202 of the Energy Reorganization Act authorize NRC licensing of certain waste management activities.

Subsection 202(3) assigns NRC licensing and related regulatory authority over DOE facilities "used primarily for the receipt and storage of high level radioactive wastes resulting from activities licensed under [the 1954] Act."

Subsection 202(4) assigns NRC licensing and related regulatory authority over "Retrievable Surface Storage Facilities and other facilities authorized for the express purpose of subsequent long-term storage of high-level radioactive waste generated by [DOE], which are not used for, or are part of, research and development activities."

It is important to note the words used in the above quoted sections--"used primarily for" and "authorized for the express purpose of." If those conditions are not satisfied, DOE facilities for storage or disposal of the specified material are exempt from NRC licensing.

National Environmental Policy Act of 1969 (NEPA)

In addition to the above statutes, NRC is required under NEPA to consider the environmental impacts of the activities it licenses. The Commission through its NEPA authority may impose license conditions to minimize adverse environmental impacts.

4.2 Federal Waste Management Activities Not Presently Licensable by NRC

The following activities are not presently licensable by NRC:

- Storage or disposal of high-level waste from DOE activities in a DOE research and development facility.
- DOE facility for short-term storage of high-level waste from DOE activities (e.g., existing DOE HLW tanks).
- DOE operating facility storage/disposal of:
 - transuranic contaminated waste (TRU)
 - foreign high-level waste not resulting from a licensed activity
 - low-level waste (LLW)
- DOE decommissioned facilities except those covered under section 202 of the 1974 Act.
- Storage or disposal of naturally occurring and accelerator-produced isotopes (except, e.g., radium and daughters in mill tailings).
- DOE high-level waste processing facilities, e.g., solidification, strontium and cesium extraction plants, crystallization plants, etc.

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