



1107 20  
UNITED STATES  
NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D. C. 20555

May 5, 1978

SECRETARIAT  
RECORD COPY

OFFICE OF THE  
CHAIRMAN

The Honorable Pete V. Domenici  
United States Senate  
Washington, D.C. 20510

Dear Senator Domenici:

I am pleased to respond to your letter, dated May 1, 1978, asking the views of the Commission on whether NRC now has clear and unquestioned authority to license the DOE Waste Isolation Pilot Plant (WIPP) facility for the following activities: (1) geologic disposal of transuranic wastes from the defense program; (2) test disposal of up to 1,000 spent fuel rod assemblies; or (3) ultimate disposal of high level wastes from the defense program.

NRC licensing authority over DOE waste management activities is derived from section 202(3) and 202(4) of the Energy Reorganization Act of 1974. These sections confine NRC licensing authority over DOE waste management activities to certain DOE facilities for receipt and storage of "high level radioactive waste". This term "high level radioactive waste" is not defined in the Act, and there is no consistent guidance on the meaning of the term in the legislative history of the Reorganization Act.

Even though spent fuel which is to be disposed of in a geologic repository may have some resource value, it contains radioactive waste. Thus, it is clearly a "high level" radioactive waste because it contains all the toxic and long-lived radionuclides contained in the liquid wastes from reprocessing that have traditionally been regarded as a form of high level radioactive waste.

On the other hand, transuranic wastes have traditionally been distinguished from "high level radioactive waste" and treated, in the regulations, as a separate category of radioactive waste (see, for example, the AEC-proposed rulemaking notice on the subject "Transuranic Waste Disposal", 39 F.R. 32921 (Sept. 12, 1974)).

DUPE 7809260022  
~~7901020022~~  
1381 021

Thus, while the law is unclear on the point, it is the Commission's view that spent fuel to be disposed of in a geologic repository could properly be regarded as "high level radioactive waste", but that transuranic wastes probably cannot be regarded as "high level radioactive wastes". This is despite the fact that for the purposes of protecting the public health and safety, the distinction between high level radioactive wastes and transuranic wastes is of limited significance. Both types of material contain significant quantities of long-lived transuranium elements which remain hazardous for periods of time which are extremely long in terms of human chronology.

In answer to your specific questions, if WIPP is to be used exclusively for disposal of transuranic wastes from the defense program and 1000 commercial spent fuel rod assemblies, then WIPP might not be licenseable. While the 1000 commercial spent fuel rod assemblies would be "high level radioactive waste", the transuranic wastes would not be, and the facility would not be used "primarily" for receipt and storage of "high level radioactive wastes". Section 202(3) of the Energy Reorganization Act.

If WIPP is to be used for disposal of defense program high level wastes, then it would be licenseable under section 202(4) of the Act provided it was not "used for, or ... part of, research and development activities". It is possible that, depending upon the exact program proposed by DOE, WIPP could be regarded as a research and development facility exempt from licensing.

The following amendment to section 202 of the Energy Reorganization Act, which we have drafted in response to your request, would provide an unambiguous basis for licensing jurisdiction over WIPP.

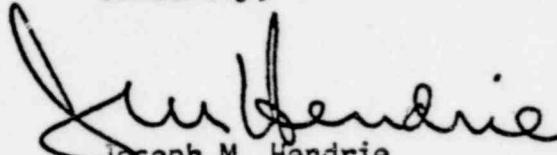
"(5) The Waste Isolation Pilot Plant proposed to be located near Carlsbad, New Mexico"

Should there be a significant change in the WIPP proposal--for example, should the location be changed--then new legislation would be necessary. However, the language proposed above has the advantage of retaining the present language in section 202 and thereby avoiding any unintended impact on future facilities other than WIPP.

1381 022

The staff currently has under preparation a paper which addresses the need for additional legislative authority in the waste management area. This evaluation will include consideration of the desirability of extending NRC licensing authority over DOE waste management activities. I expect that the Commission will consider this matter in the near future.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. M. Hendrie".

Joseph M. Hendrie  
Chairman

1384 023