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March 10, 1994

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(598R4868)

Donald A. Cool, Chief
Radiation and Health Effects Branch
Division of Regulatory Applications
Office of Nuclear Regulatory Research
United States Nuclear Regulatory Commission
Washington, DC 20555-0001

Re: Draft Radiological Criteria for Decommissioning

Dear Mr. Cool:

Thank you for the opportunity to submit comments on the NRC's Draft Radiological Criteria for Decommissioning (1/26/94). Comments of the State of Nevada are enclosed.

Sincerely,

Robert R. Loux
Executive Director

RRL/JHD/njc

Enclosure

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STATE OF NEVADA'S COMMENTS

REGARDING

NRC'S DRAFT RADIOLOGICAL CRITERIA FOR DECOMMISSIONING

Nevada is generally impressed with the creative and flexible decommissioning criteria which are contained in the January 26, 1994 draft distributed for comment. The approach permits the utility proposing decommissioning to implement cost effective, site-specific approaches to individual problems. It also requires the specific concerns of related communities to be dealt with directly by decommissioning proposals. This relieves both proponents and opponents to work on real solutions to real problems, in place of theoretical differences about universal solutions.

Definition of "Decommissioning"

In Nevada's earlier comments, we had recommended the following definition of decommissioning: "to remove nuclear facilities safely from service and to reduce residual radioactivity, through licensed, continuous, on-site waste management, engineering, supervision, surveillance and maintenance, to a level that protects the public health and safety through decreasing opportunities for exposure to significant levels of radioactivity."

Section 20.1003 of NRC proposed regulation now defines decommissioning as "to remove a facility or site safely from service and reduce residual radioactivity to a level that permits (1) release of the property for unrestricted use and termination of the license, or (2) release of the property under restricted conditions and terminations of the license." The radiological criteria for unrestricted release, contained in section 20.1404,

and criteria for license termination under restricted conditions, contained in section 20.1405, taken together with the process for public involvement contained in sections 20.1406 and .1407, clearly permit

the "licensed, continuous, on-site waste management, engineering, supervision, surveillance and maintenance" contemplated in Nevada's proposed definition. Therefore, Nevada supports the proposed definition of decommissioning.

Goal of Decommissioning

The goal of the criteria, to "reduce the concentration of individual radionuclides which could contribute to residual radioactivity at [a decommissioned] site to a level which is indistinguishable from background" (20.1402) is a worthy goal, and Nevada supports it.

ALARA

Nevada particularly endorses the NRC's inclusion in ALARA of evaluation of the risks to humans and the environment from transportation and disposal of radioactive wastes generated in the decommissioning process, section 20.1403(b).

Critical Group

The proposed definition of "critical group," section 20.1003, could cause problems because of the concept of "greatest exposure." The radiological criteria in sections 20.1404 (a)(2) and (b) and 20.1405 (b) require demonstration of "cumulative TEDE to the average member of the critical group." The group with the "greatest exposure" may in fact not be a large group (perhaps even insignificant in size), compared to the group with the next

greatest exposure. Or the exposure may be only minimally greater than that to the next exposure group. Is "greatest exposure" a time times dose evaluation, or only a dose evaluation? Does "greatest exposure" contemplate exposure times number of exposed or only exposure of the average member of the greatest exposure group? In other words, how does one define the greatest exposure group? Some more thought should be put into this concept.

Site Specific Advisory Board

Section 20.1407 (c) defines the membership of site specific advisory boards. Nevada endorses the concept of such boards as they involve the first hands knowledge of the people most involved with the individual site being decommissioned. However, the membership should include a representative of the waste destination. We would propose that 20.1407(C)(1) and (3) be amended as follows:

(1) Reflect the full range of interests in the affected communities and regions, and be composed of individuals who could be directly affected by residual radioactivity at the decommissioned site and waste destination site.

(3) Include representatives from the licensee; local and state governments in which the decommissioned site and waste destination site are located; persons residing in the vicinity of the site; citizen, environmental, environmental justice, and other public interest groups; and Indian Nation or other indigenous people that have treaty or statutory rights that could be affected.

Enforceability

With respect to sites which are decommissioned under restricted use, the proposed rule requires that the "institutional controls proposed by the licensee (b) will be enforceable." Section 20.1407(2)(b). The Supplementary Information (p. 47) indicates that "Institutional controls would have to be enforceable by a responsible government entity or in a court of law in response to suits by affected parties." Inasmuch as the "application of restrictions must be able to reduce the average dose to the appropriate critical group to the same 15 mrem/year value used as the limit for unrestricted use" (Supplementary Information, p. 48), it may be construed that the "critical group" are the only "affected parties." This implication is too limiting, in Nevada's opinion. Rather, "affected parties" should be defined in the document creating the use restriction.

Nevada recommends the use of trusts for the benefit of particular protected groups of persons, or appurtenant easements for the benefit of particular properties. If such devices are used, there will be no doubt as to enforceability.

Licensees could impress their real property with a trust for the benefit of, e.g. "all persons who may become exposed to radiation through contamination of groundwater". All such persons would be the beneficiaries of an uncontaminated groundwater resource. As the trustee of the trust, licensees, or their transferees, would be constrained to operate the property so as to deliver the benefit to the beneficiaries. All beneficiaries would have the right to enforce their benefits under the trust. Continued monitoring could be imposed as a duty of the trustee

under the trust creation instrument. In the alternative, the instrument creating the trust could permit the entry upon the premises of an "independent third party to assume and carry out responsibilities for any necessary control and maintenance of the site." (20.1407(a)(3)) as a means of ascertaining the continued performance of the trustee. Like easements, the cost of monitoring would be covered by the licensee's "sufficient financial assurance."

Unlike appurtenant easements, trusteeship is totally flexible as to definition of the parties benefitted and the parties capable of enforcing the trust without reference to location of the dominant estate. The beneficiary of a trust stands in the same position as against the trustee as does the dominant tenement of an appurtenant easement against the servient tenement. Like easements, trust benefits are protected by actions at law. But beneficiaries need not be landowners. They could be any group of defined individuals or governmental entities.

Enforcement of appurtenant easements would also be certain of enforcement, as there would be no intermediate parties between the dominant estate holders and the property whose use is restricted. It would be possible to entitle the dominant estate holders to enforce their easements first through the NRC, rather than in state court. The potential remedy before the NRC could be resurrection of NRC's licensing jurisdiction and application of new "non-institutional" controls.

Because of the unique factual situation which may exist at any particular site, the decision regarding the actual use restriction

imposed should be reserved until a particular site is under consideration.

Minimization of Contamination

Reduction of the volume of radioactive waste, whether in large or small amounts is a necessary element in development of equitable solutions to the problem of disposal of that waste. The perception of most (all?) prospective waste destination communities is that no-one else is sharing in the onus of waste disposal. Only if waste producers are prepared to demonstrate a commitment to reduction of waste volume can waste destination communities begin to perceive that there is a shared commitment. Multiple waste facility siting and regional equity are also necessary elements to demonstration of shared commitment. Nevada therefore supports the minimization of contamination concepts incorporated in draft section 20.1408.

Scope

Nevada disagrees with the NRC's exclusion of sites already covered by Commission approved decommissioning plans. The proposed criteria should apply to all NRC licensed facilities.