



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

January 18, 1991

The Honorable J. Robert Kerrey
United States Senate
Washington, D.C. 20510

Dear Senator Kerrey:

I am responding to your letter to Chairman Carr dated December 18, 1990, in which you requested on behalf of one of your constituents a document identified as an "Office of General Counsel staff analysis of section 5 of the Low-Level Radioactive Waste Policy Amendments Act." Your constituent is correct in noting that this document was forwarded to the Commission as an enclosure to a Commission paper (SECY-90-318). Although SECY-90-318 was released to the public, the enclosure containing the General Counsel's analysis was not made available at that time nor has it been provided subsequently to any party outside the agency.

As a matter of policy, the Nuclear Regulatory Commission (NRC) does not release to the public legal analyses prepared by the Office of the General Counsel. Documents containing legal advice and opinions, like the one requested by your constituent, are exempt from disclosure under Exemption 5 of the Freedom of Information Act. Because the Commission believes that the protection of the attorney-client relationship between itself and its legal advisors outweighs the potential benefits to the public from the release of the General Counsel's legal analysis, the Commission must respectfully decline to provide the requested document for your constituent.

I want to emphasize, however, that NRC's intention in releasing SECY-90-318 without the enclosure was to keep interested members of the public informed of matters associated with implementation of the Low-Level Radioactive Waste Policy Amendments Act. The Commission believes that SECY-90-318, in the form released to the public, fully describes the staff's conclusions and recommendations to the Commission. Accordingly, the Commission would welcome any comments that your constituent would care to provide on this issue to assist the Commission as it considers the staff's recommendations.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dennis K. Rathbun".

Dennis K. Rathbun, Director
Congressional Affairs
Office of Governmental and
Public Affairs

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