

May 23, 1996

Mr. James M. Owendoff
Deputy Assistant Secretary
for Environmental Restoration
U.S. Department of Energy
Washington, DC 20585

Dear Mr. Owendoff:

Our staffs have been exchanging information regarding the potential for the Department of Energy to use its authority under Section 151(b) of the Nuclear Waste Policy Act to take custody of a number of Nuclear Regulatory Commission-licensed facilities now undergoing decommissioning for which onsite disposal may be the preferred approach. I have enclosed an excerpt from our Site Decommissioning Management Plan Supplement 1 (NUREG 1444), in which we briefly describe the approach for the Department of Energy to utilize this authority to take possession of these sites.

Because our staffs need policy guidance and direction from us in order to move forward, I propose that we meet at your earliest convenience so that we can discuss this important matter. I have asked my staff to work with your staff to schedule such a meeting. Our principal point of contact with DOE for these discussions has been Joe Virgona of your Albuquerque Operations Office.

Please call me at (301) 415-7358 or Judi Greenwald of my staff at (301) 415-6635 if you have further questions.

Sincerely,

(Original signed by)

John T. Greeves, Acting Deputy Director
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

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UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

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A handwritten signature in cursive script, reading "John T. Greeves", is written over a horizontal line.

John T. Greeves, Acting Deputy Director
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Site Decommissioning Management Plan

substantially similar among the EISs (i.e., onsite disposal, offsite disposal, combination of onsite/offsite disposal, and no action).

After completing its review and evaluation of comments on the draft EISs for three of the five sites, the NRC plans to assess in mid-1996 whether any generic conclusions can be drawn based on the site-specific EISs and supporting generic calculations. If generic conclusions can be supported, the staff will consider developing a generic EIS regarding onsite waste disposal, in lieu of the more costly and time-consuming preparation of tens of site-specific EISs. The generic EIS could support either site-specific licensing actions authorizing onsite disposal or some other alternatives, or a rulemaking on disposal of residual radioactivity using onsite disposal.

4.2.6 Institutional Controls

The proposed rulemaking on radiological criteria for decommissioning allows for restricted termination of NRC licenses in accordance with specified criteria. In addition, as discussed in Section 4.2.5, institutional controls may be needed for some decommissioning projects that involve the stabilization of large volumes of low-activity, bulk radioactive waste onsite. However, the form and mechanisms for implementing the institutional controls have not yet been established. In the absence of general approaches, licensees would have to develop and defend specific proposals for applying such institutional controls to ensure protection of the public and environment.

However, under section 151(b) of the Nuclear Waste Policy Act, the DOE has already been authorized to take possession of waste disposal sites provided that the following criteria are met:

- The NRC certifies that the disposal action satisfies applicable requirements
- The licensee sets aside sufficient funds to ensure that long-term custody would be at no cost to the Federal government
- The NRC determines that such controls are necessary or desirable to protect the public.

A similar provision in section 151(c) was used as the vehicle to transfer custody of the AMAX site near Parkersburg, West Virginia, from AMAX to DOE.

If DOE is supportive and has available resources, and if the legislative history supports the use of 151(b) in this manner, the section 151(b) option would constitute a ready-made mechanism to provide for long-term institutional control of the waste disposal sites. Use of this option would eliminate the need for licensees and responsible parties to develop and negotiate specific institutional controls for disposal sites. This approach could reduce the regulatory burden and simplify the demonstration that would otherwise be required to show that the proposed control mechanism will be durable and effective in protecting the public.

In August 1995, the NRC staff intends to initiate discussions with the DOE to inquire whether, and under what terms, the DOE would be amenable to using the provision in section 151(b) to transfer custody of disposal sites and accomplish long-term control and surveillance of the sites. If the DOE is amenable, the NRC could develop a standard procedure for transferring the sites. In addition, the NRC could then provide guidance to licensees and responsible parties about the use of the mechanism, and implement the provision in conjunction with the final rulemaking on radiological criteria for decommissioning. If one or more barriers to the use of this provision exist, the NRC could draft and submit similar legislation for Congressional consideration. In this latter case, the negotiations with DOE would prove instructive regarding the types of issues that are likely to arise during legislative consideration of the proposal.

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John T. Greeves, Acting Deputy Director
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cc: J. Virgona

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