



OFFICE OF THE
GENERAL COUNSEL

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 2, 1998

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MEMORANDUM TO: Donald A. Cool, Director
Division of Industrial and Medical
Nuclear Safety, NMSS

FROM: *Joseph R. Gray by GND*
Joseph R. Gray
Associate General Counsel for
Licensing and Regulations
Office of the General Counsel

SUBJECT: RULEMAKING PLAN: 10 CFR PART 72 - CLARIFICATION AND
ADDITION OF FLEXIBILITY

This is in response to your May 19, 1998, memorandum requesting the concurrence of the Office of the General Counsel (OGC) in the subject rulemaking plan and associated Commission paper. OGC requests that the following paragraphs be placed in the "Office of the General Counsel Legal Analysis" section of the rulemaking plan:

OGC does not foresee a basis for legal objection to the contemplated rulemaking. This rulemaking is primarily designed to enhance the clarity of Part 72 by explicitly identifying the regulations that apply to general licensees. The rulemaking also includes amendments which (1) will allow a specific license applicant desiring to use an NRC-certified cask to simply reference the CoC in its application rather than submit a safety analysis report for the cask, and (2) will allow an applicant for a CoC to begin fabrication of the cask at its own risk prior to receiving the CoC. It is reasonable for the Commission not to expend its own or a potential licensee's resources by requiring a redundant review, including possible adjudication, of a cask design which has already been thoroughly reviewed by the staff and approved through the rulemaking process. It is also reasonable for the Commission to permit a CoC applicant to begin, at its own risk, fabrication of a cask prior to issuance of the CoC, given that cask fabrication will be performed under an NRC-approved QA program and given that staff has published its "Standard Review Plan for Dry Cask Storage Systems" which presents its expectations in the review of cask designs.

The proposed amendments do not involve provisions which would impose backfits as defined in 10 CFR § 72.62 so a backfit analysis will not be required. An environmental assessment will not be needed for the clarifying changes because the categorical exclusion at 10 CFR 51.22(c)(2) applies but will be needed for the amendments providing increased flexibility to applicants for licenses and certificates. A regulatory analysis will be needed in conformance with NRC policy.

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As noted above, the "Supporting Documents Needed" section of the rulemaking plan needs to be amended to indicate that an Environmental Assessment and Regulatory Analysis will be done in support of the rulemaking. In addition, we request incorporation of the attached edits.

Subject to the above changes, OGC has no legal objection to the rulemaking plan and Commission paper.

Attachment: As stated

cc: G. Gundersen, NMSS/IMNS
F. Young, NMSS/SFPO