

May 21, 1997

MEMORANDUM TO: L. Joseph Callan
Executive Director for Operations

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - SECY-97-073 - COMMENTS
ON THE U.S. ENVIRONMENTAL PROTECTION AGENCY'S
ADVANCE NOTICE OF PROPOSED RULEMAKING FOR THE
DECISION ON WHETHER THE WASTE ISOLATION PILOT
PLANT COMPLIES WITH THE 40 CFR PART 191
DISPOSAL REGULATIONS AND THE 40 CFR PART 194
COMPLIANCE CRITERIA

This is to advise you that the Commission has not objected to sending the proposed letter to EPA, subject to the comments provided below and the changes indicated in the attachment.

- 1) The letter should state the central point of Comments 11 and 12 of the attachment to Enclosure 1 of SECY-97-073 in a direct and simple manner. More specifically, the letter should make it clear that maximum contaminant levels were derived on the basis of technology that bears little, if any, relationship to either ground water protection or ground water remediation and for that reason their application to either purpose is inappropriate.
- 2) The letter should attach SECY-97-073 since it provides a thorough and detailed discussion of the background and technical issues associated with the standards for WIPP.
- 3) To the degree that it is necessary to provide more up-to-date information than that contained in SECY-97-073, the staff should attach a detailed set of comments to the letter, including, but not limited to:
 - a) groundwater issues,
 - b) appropriateness of the dose standard, and
 - c) concerns raised by the technical community and

SECY NOTE: THIS SRM AND SECY-97-073 WILL BE MADE PUBLICLY AVAILABLE 5 WORKING DAYS FROM THE DATE OF THIS SRM.

whether the staff finds those concerns to be valid.

- 4) Also, a list of recent NRC/EPA interactions on the major technical issues should be attached to the letter.
- 5) The letter, with attachments, should be distributed to appropriate Congressional committees.

Attachment:
As stated

cc: Chairman Jackson
Commissioner Rogers
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
OGC
CIO
CFO
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR
DCS

DRAFT

Ms. Ramona Trovato, Director
Office of Radiation and Indoor Air
U.S. Environmental Protection Agency
Washington, DC 20460

Dear Ms. Trovato:

I am responding to the November 11, 1999, Advance Notice of Proposed Rulemaking, Decision to Certify Whether the Waste Isolation Pilot Plant Complies with the 10 CFR Part 201 Disposal Regulations and the 10 CFR Part 201 Compliance Criteria. Part 201 applies to sites not characterized under Section 201(a) of the Nuclear Waste Policy Act, i.e., geologic disposal of spent nuclear fuel, high level and transuranic radioactive wastes at sites other than Yucca Mountain. EPA is authorized to certify whether the Waste Isolation Pilot Plant complies with Part 201, under the 10 CFR and 40 CFR Act, the Nuclear Regulatory Commission may eventually need to license other facilities that must comply with 10 CFR Part 201, as well as NM, which may have to comply with requirements similar to those found in Part 201. We recognize that EPA's decision on the certification of the WIPP will reflect the record before EPA and note that the record will be influenced by the contents of 10 CFR Parts 201 and 201.1 the compliance certification process and the characteristics of both the WIPP site and of the waste to be disposed of. These factors necessitate that EPA decisions on specific elements of the EPA Department of Environmental Protection, and the decision on whether to certify WIPP, need to be considered as being a public one on WIPP. Therefore, EPA considers that decisions made by EPA in this rulemaking, particularly decisions concerning compliance with Part 201 standards, will be demonstrated, established, no precedent of an order or licensing actions.

In a related matter, the staff considers it appropriate to restate concerns previously provided to EPA regarding aspects of the environmental standards that will be most complex. EPA commented extensively on the development of these standards,

incorporate its priorities, issues, comments on the proposed standards
submitted at the RAC meeting. Specifically, RAC noted that the
technical committee has raised significant concerns regarding the
scientific basis for, and the appropriateness of, some of the
standards. RAC also, in its final recommendation, not to accept
comments incorporating those from RAC on those portions of the
standards that were tentative, reinstated. The most recent
National Academy of Sciences committee recommendations on the
technical bases for the standards reiterate some of these
concerns. RAC remains concerned about the technical basis of
some requirements in Part III. Enclosure provides detailed
comments describing RAC's concerns with Part III.

In addition, DOE and ORR have consistent views regarding the need to include separate groundwater protection criteria in the environmental waste management standards. Separate groundwater protection requirements are a component of Part 190. DOE believes that in view of protection criteria, DOE takes into account all factors, are sufficient protective of the groundwater impact, and represent a more uniform and comprehensive approach to protecting public health and safety. Further, ORR continues to believe that the use of maximum contaminant levels (MCLs) in the standards is fundamentally incompatible with the technical basis DOE employs to derive these levels and is a continuation of DOE's practice of applying the MCLs only in Part 190 to other activities e.g., DOE standards that require appropriate justification. ORR has raised similar concerns with DOE's application of MCLs in draft standards applicable to DOE facilities at EM.

The staff has been working with DOE to examine implementation issues associated with the DOE recommendations and the draft environmental standards for EM, Nevada. I believe that these discussions have been fruitful, leading to the DOE staff's increased awareness of the ORR concerns related to the implementation of DOE standards. I am providing a list of these interactions between ORR and DOE in Enclosure 1. To further this understanding, DOE will be asked to meet with DOE regarding the staff's positions on Part 190 and groundwater protection for DOE facilities.

Sincerely,

Barry A. Grier, Director
Office of Nuclear Material Safety
and Health

Enclosures

1. Comments on Part 190

2. List of ORR and DOE interactions

cc Doclet 0. 000000 000000
0r Doclet, Room M00000 00000000
00 0nvironmental 00tection 00enc0
000 M 0reet, 00
0s0n0ton, D0 00000