



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

DR

January 7, 1981

The Honorable C. Worth Bateman  
Acting Under Secretary of Energy  
Washington, D.C. 20545

Dear Mr. Bateman:

As indicated in Chairman Ahearne's October 20, 1980 letter to Secretary Duncan, the Commission is concerned that DOE has limited the scope of its staff's activities relative to the cleanup at TMI-2, specifically, that DOE has not included in their planning, immobilization at existing DOE facilities of high specific activity wastes which are anticipated to be generated from the cleanup.

NRC understands that your staff has raised questions about accepting these wastes for processing and storage at DOE facilities, even though experienced staffs and suitable technology or systems appear to be available at the existing DOE high level waste handling and processing facilities, and the required immobilization steps are beyond the current capabilities of Metropolitan Edison Company. The DOE questions, as expressed to our staff, center on the applicability of NRC licensing requirements which might be associated with transfer of these high specific activity materials from Metropolitan Edison Company, to a DOE facility. Based upon our understanding of the needed activities and the resources and facilities available to you to carry out these activities, NRC licensing requirements should not apply.

As you know, licensing authority with respect to DOE waste management facilities is derived from section 202(3) of the Energy Reorganization Act of 1974. Under that provision, the Commission exercises licensing authority as to DOE "facilities used primarily for the receipt and storage of high-level radioactive wastes resulting from activities licensed under [the Atomic Energy Act]." The term "high-level radioactive wastes" has been used in the past to refer solely to spent fuel and reprocessing waste. We would not rule out the term's application to wastes which present comparable hazards, possibly including those from TMI-2. However, even if the materials are deemed to be "high-level radioactive wastes," NRC would have no jurisdiction over the DOE facilities at which they are stored (or disposed of) unless those facilities are used primarily for receipt and storage of commercial wastes. If the Department were to take custody of the TMI-2 waste, we anticipate that it would be stored at a location having some other primary use, and accordingly NRC licensing would not be required by law.

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We note that the material would need to be processed, at some point, to make it suitable for disposal. It is our position that such processing is not encompassed by the terms "receipt and storage," so that the facilities in which processing activities were performed would not be subject to licensing under section 202(3).

Please contact me if you wish to discuss this matter further.

Sincerely,

(Signed) William J. Dircks

William J. Dircks  
Executive Director for Operations