

May 15, 2001

Mr. Peter S. Hastings
Duke Cogema Stone & Webster
P.O. Box 31847
Charlotte, NC 28231-1847

SUBJECT: REQUEST TO PERFORM EARLY SITE WORK

Dear Mr. Hastings:

As you know, on February 28, 2001, Duke Cogema Stone & Webster (DCS) submitted a Construction Authorization Request (CAR) regarding a proposed mixed oxide (MOX) fuel fabrication facility (FFF). In your letter of April 30, 2001, DCS requested approval to perform certain activities at the proposed MOX FFF site prior to an NRC decision on whether to approve the CAR. Specifically, DCS is seeking approval to (1) remove (and presumably relocate) an existing overhead power line which now transverses the proposed MOX FFF site; (2) clear approximately 28 acres of trees, remove stumps, and grade the proposed site; (3) build temporary construction facilities, install underground utilities, develop parking and storage areas, and perform other pre-construction activities at the proposed site; and (4) construct an administration building, warehouse, and diesel generator building, and install a concrete slab for a motor control center.

We have reviewed the subject request and have determined that the above-referenced activities -- should they occur prior to an NRC decision on the CAR -- would constitute a prohibited "commencement of construction," under 10 CFR 70.23(a)(7). As used there, the term "commencement of construction" means "any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site." While the regulation specifies that the term does not cover actions such as building roads necessary for site exploration and actions necessary to establish background information related to protecting environmental values, the activities you are proposing appear to go beyond the scope of the activities allowed under 10 CFR 70.23(a)(7).

Accordingly, should DCS choose to further pursue the subject request, you will need to file for an exemption, pursuant to 10 CFR 70.17, from the applicable requirements of 10 CFR 70.23(a)(7). If you have any further questions, please contact Mr. Timothy C. Johnson at (301) 415-7299.

Sincerely,

/RA/

Eric J. Leeds, Chief
Special Projects Branch
Division of Fuel Cycle Safety
and Safeguards, NMSS

Docket: 70-3098

cc: Mr. James Johnson, DOE
Mr. Henry Potter, SC Dept of Health &
Environmental Control
Mr. John T. Conway, Chairman, DNFSB

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