



JOHNES BURDEN
PROPOSED RULE PR-140 ①
(50 FR 13978)

NUCLEAR WASTE PROJECT OFFICE

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DOCKETED
USNRC

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OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Secretary of the Commission
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

Attention: Docketing and Services Branch

Dear Secretary:

Enclosed please find comments of the State of Nevada regarding the Commission's Proposed Criteria for Extraordinary Nuclear Occurrences.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script, reading "Robert R. Loux".

Robert R. Loux
Director

RRL/gjb

Enclosure

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Acknowledged by card. JUN 3 1985

**COMMENTS REGARDING PROPOSED CRITERIA FOR
EXTRAORDINARY NUCLEAR OCCURRENCES 50 FR 13978**

The Nuclear Regulatory Commission has requested comments on proposed amendments to the criteria for the determination of an extraordinary nuclear occurrence. The State of Nevada is a party with interest in the outcome of these proposals inasmuch as Nevada anticipates that the Price-Anderson Act, in which the extraordinary nuclear occurrence concept is created, will be amended by the Congress to address the issue of the liability arising from the Department of Energy's high-level nuclear waste program and that the definition of extraordinary nuclear occurrence may be incorporated therein in some fashion.

It is interesting and important to note the statement made at 50 FR 13981 that "a principal basis of an ENO determination is that an event occurred which released radioactive materials in such quantities that the event is clearly 'extraordinary' compared to normal operation." It is this principle which leads to the conclusion that the absolute liability which follows from the waiver of defenses whenever an ENO is determined should apply as a matter of statute in the nuclear waste context. The "normal operation" of a nuclear waste repository is to completely isolate radionuclides from the general environment. Any failure of a repository to perform such normal operation is extraordinary and the government should be liable without defense in the event of injuries resulting therefrom. Similarly, the transportation of radioactive waste to a DOE facility and its emplacement therein is operating normally when waste is contained. When, by accident, containment is not accomplished an extraordinary event has occurred.

The State of Nevada heartily endorses the proposal of Commissioner Bernthal that "a release of radioactive materials which results in doses or dose rates offsite

of a magnitude equal to or greater than the proposed criterion will suffice to demonstrate that substantial releases of offsite doses have occurred and that substantial damage will occur." This straight forward approach to the measurement of extraordinary occurrence could apply directly in the nuclear waste repository context. The Environmental Protection Agency will have in place generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories. The Nuclear Regulatory Commission has criteria establishing acceptable release rates for the conduct of transportation and handling of all nuclear materials including radioactive waste. Commissioner Bernthal's proposal that an extraordinary event has occurred whenever the established criterion has been exceeded provides a bright line which can be instantly evaluated to determine whether liability is absolute. The beneficial effect of such a bright line is to compensate injury whenever established limits are exceeded and to assist radioactive materials possessors in diligently avoiding liability by maintaining the established limits. The concept promoted by Commissioner Bernthal is valuable not only because of its ease and utility of application in the power reactor setting, but also because of its general applicability to all radioactive materials handlers including the Department of Energy in its high-level nuclear waste program.

The State of Nevada encourages the Commission to adopt option number three-Commissioner Bernthal's proposal as described at 50 FR 13981-13984.