DIRK KEMPTHORNE
GOVERNOR

September 14, 2004

William D. Magwood, IV, Director
Office of Nuclear Energy, Science and Technology
United States Department of Energy
Washington DC 20585

Dear Mr. Magwood:

Pursuant to the provisions of the State of Idaho's October 1995 Settlement Agreement with the Department of the Navy and the Department of Energy, the State has considered your request of June 9, 2004. DOE requested the State's permission to ship four (4) spent nuclear fuel (SNF) rods and two (2) control rod tubes from a commercial nuclear power plant located in North Anna, Virginia to the Argonne National Laboratory West (ANLW) at the Idaho National Engineering and Environmental Laboratory (INEEL) for examination.

In considering this request, we carefully evaluated its relationship to the 1995 Settlement Agreement's underlying philosophy. The 1995 Settlement Agreement reflects the State's longstanding concern for the safe management and disposal of SNF and related wastes at appropriate geologic repositories. It also recognizes Idaho's longstanding partnership with DOE and the Navy in projects to improve our national security, energy independence and nuclear waste management.

This past year, DOE designated the INEEL as our Nation's lead laboratory in nuclear energy research. DOE has represented that, if proven successful and appropriately licensed, this commercial nuclear fuel will result in greater energy production and reduced SNF generation, thus benefiting our Nation's energy, environmental and national security needs. We view the purpose of this request to be consistent with the INEEL's mission and our partnership with DOE.

At the same time, Idaho wants to ensure that DOE honors its commitments under the 1995 Settlement Agreement. The 1995 Settlement Agreement specifically prohibits shipments of commercial spent nuclear fuel to the INEEL to ensure Idaho will not become the default home for commercial SNF such as that represented by this proposed shipment.

In reaching our decision, we also took into account the public input received on a similar proposal that DOE chose not to pursue last year.

We find DOE's pending request is consistent with the principles of the 1995 Settlement Agreement and appropriately balances competing public concerns. It allows research important to improving nuclear energy production to continue while ensuring most of the nuclear waste involved in the project is removed from Idaho in a timely manner.

We therefore approve DOE's request in accordance with the conditions set forth below, including the condition that this shipment will not increase the annual or total amount of shipments of DOE spent fuel to Idaho allowed under the 1995 Settlement Agreement.

Scope of the Project

The project will involve the shipment of only four SNF rods approximately 3/8ths inches in diameter and thirteen feet in length and two "control rod tubes" of similar dimension. The four SNF fuel rods are the property of Framatome ANP. The purpose of the shipment is to conduct analysis and examination of the cladding of the fuel rods at the ANLW Hot Fuel Examination Facility (HFEF) to facilitate licensing of this nuclear fuel by the U.S. Nuclear Regulatory Commission (NRC) for commercial use.

The rods and rod tubes will be examined in Idaho. A small portion of the rods and rod tubes will be destructively examined. The combined non-destructive and destructive examinations will generate approximately 0.65 liters of waste. All but approximately 185 grams of heavy metal contained in the shipment will be shipped to Argonne East in Illinois not later than 15 months of its receipt in Idaho.

Specific Approval Conditions

1. Amount and source of material to be shipped to Idaho: Four (4) SNF rods and two (2) control rod tubes as described in DOE's 8/13/04 presentation materials.

2. 2005 Shipment Limit and Total Volumes: The shipment of Framatome SNF to ANLW will count as a shipment of DOE SNF for purposes of the annual shipment limits contained in paragraph D.2.f of the 1995 Settlement Agreement for calendar year 2005. The amount of SNF, measured in fractions of metric tons heavy metal (MTHM) remaining on site after December 31, 2006 will count toward the total metric tonnage limits for DOE SNF contained in paragraph D.2.c of the 1995 Settlement Agreement.

3. Examination to be conducted: Non-destructive and destructive examination as described in DOE's 8/13/04 presentation materials.

4. Waste generated and classification: 20 exam mounts (approximately 45g of SNF and 580cm^3 in volume), as described in DOE's 8/13/04 presentation materials and 8/24/04 e-mail, will be created and managed as SNF. An additional amount of approximately 140g of SNF will be dissolved for purposes of chemical analysis. The waste generated from chemical dissolution will result in approximately 70 cm^3 of solidified waste. (The waste will be consolidated with other ANLW laboratory wastes, resulting in a total of approximately 1 liter of solidified waste.) Both waste streams generated by this proposal will be placed in the Radioactive Scrap and Waste Facility to await shipment to an appropriate off-site geologic repository in compliance with the shipment deadlines of the 1995 Settlement Agreement.

5. Schedule of Framatome SNF leaving Idaho: Except for the wastes generated during destructive examination and analysis specified in item number 4 above, the remainder of the SNF and control rod tubes shipped pursuant to this proposal shall leave the State of Idaho by December 31, 2006. Failure to comply with this schedule shall result in invocation of the remedy specified in paragraph D.2.i. of the 1995 Settlement Agreement.

As our respective staffs discussed, the State's approval is based upon the specific facts involved in this proposal and its importance to the INEEL's mission and the United States' energy, security and

environmental priorities. If other INEEL mission-related proposals such as this arise in the future, we will evaluate them on a case-by-case basis to ensure the terms, spirit and intent of the 1995 Settlement Agreement remain intact.

Sincerely,

DIRK KEMPTHORNE
Governor

LAWRENCE WASDEN
Attorney General

DK:pn