

DOCKET NUMBER
PROPOSED RULE **PR 2, 19, 20 et al.**
(64FR8640)

79

DOCKETED
USNRC

Eureka County
Yucca Mountain Information Office
P.O. Box 714
Eureka, Nevada 89316
Phone (775) 237-5372 FAX (775) 237-5708

'99 JUL -2 P2:42

C-1
AD-1

June 28, 1999

Commissioner Greta Joy Dicus
c/o Secretary
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001
Attention: Rulemakings and Adjudications Staff

RE: 10 CFR Part 63 Proposed Rule

Dear Chairman Dicus:

Attached are the comments of Eureka County, Nevada concerning the above referenced proposed rule. Eureka County is an affected county under Section 116 the Nuclear Waste Policy Act as amended.

We appreciate the time extension made by the Nuclear Regulatory Commission on this regulation in response to requests from the public, and complement the Commission staff on its diligence in scheduling meetings in Nevada regarding the rule.

Please make our comments part of the record.

Sincerely,



Abigail C. Johnson
Nuclear Waste Advisor
Eureka County

cc: Leonard Fiorenzi
John Balliette
Vicki Drennan
AULGs
Nevada NWPO

Template = SECY-067

JUL - 8 1999
Acknowledged by card
SECY-02

**Eureka County
Yucca Mountain Information Office**

P.O. Box 714
Eureka, Nevada 89316
Phone (775) 237-5372 FAX (775) 237-5708

**Comments of Eureka County, Nevada
Submitted June 28, 1999
on the Nuclear Regulatory Commission 10 CFR Part 63: Disposal of High-Level
Radioactive Wastes in a Proposed Geological Repository at Yucca Mountain,
Nevada; Proposed Rule (Federal Register February 22, 1999)**

Introduction

Eureka County, Nevada is located in central Nevada. Its southern border is contiguous to Nye County, Nevada. Eureka County is an "affected unit of local government" under Section 116 of the Nuclear Waste Policy Act as amended.

Eureka County has the following comments regarding the proposed rule.

The Need for the Rule

One of the premises for the rule is that 10 CFR Part 60, which currently applies, is antiquated, and that Part 63, crafted specifically for Yucca Mountain, will "avoid the imposition of unnecessary, ambiguous or potentially conflicting criteria that could result from the application of some of the Commission's generic requirements at 10 CFR Part 60."

We question the necessity of the proposed rule. One of the major criticisms of the Yucca Mountain project is that the rules are being written to fit the site. This proposed rule appears to be in that category. By developing specific rules just for Yucca Mountain, the question is raised: Why does Yucca Mountain need its own rules rather than meeting the generic rules for 10 CFR Part 60? Our concern is that rules are being developed to make it easier for Yucca Mountain to become a repository, and that it cannot meet the standards of the generic rule.

The Timing of the Rule

The timing is also problematic. NRC should wait until EPA issues the final standards for Yucca Mountain. Since a rulemaking will be required at that time, it would be better to wait until the EPA standard is proposed, as other aspects of this rule might be affected by that proposed standard. We recommend that once new EPA standards for a Yucca Mountain repository are

promulgated, the Commission's existing repository licensing rule, 10 CFR Part 60 be modified, if necessary, to be consistent with the new EPA standard.

COMMENTS ON NRC'S SPECIFIC QUESTIONS

The Commission has requested comment on five specific questions relative to its proposed repository licensing rule.

Question 1. The Commission solicits comments on the appropriateness of its proposed approach to defining the critical group and reference biosphere for Yucca Mountain. In particular, the Commission solicits comments on any other candidate population groups, biosphere assumptions and potential exposure pathways that should be considered in the establishment of a "critical group" for Yucca Mountain.

Comment: Section 63.115 addresses the required characteristics of the reference biosphere and critical group. Section 63.115(b)(5) states that the average member of the critical group shall be an adult. We recommend that the NRC regulation require that the average member of the critical group be a child. Children are more vulnerable to the effects of radiation, and they are the future generation. If we want to protect the critical group and thus protect all, the standard should be protective of children as they are more vulnerable than adults.

Question 2. The Commission solicits comments on the appropriateness of its proposed human intrusion scenario, and the assumed timing of its occurrence, as a reasonable measure for evaluating the consequences of intrusion at a repository at Yucca Mountain.

Comment: The regulations should address more than one instance of human intrusion, and human intrusion over time. If the humans were searching for buried natural resource, it is likely that more than one hole would be drilled. While the regulation characterizes the human intrusion scenario as extreme, we believe that it is a conservative characterization. The stylized scenario, and the elimination of so many possibilities from consideration as speculative, calls into question the usefulness of the stylized scenario. Consideration of multiple boreholes, periodic drilling over time, and exploration for water should be considered. Human intrusion over time continues to be one of the major flaws in deep geologic "disposal" of radioactive waste.

Question 3. The Commission solicits comment on the merits of requiring DOE to implement a quality assurance program for the geologic repository based on the criteria of Appendix B of 10 CFR Part 50.

Comment: We support the requirement for a quality assurance program for the geologic repository based on the criteria of Appendix B of 10 CFR Part 50. The criteria provide a consistent and standardized means of accountability for the elements of the scientific and engineering program that are important to safety. The criteria also require the creation and maintenance of a record of decisions related to safety, and how those decisions were made. This

is important for a project under public scrutiny, and for a long term project, where institutional memory is short-lived in relation to the potential duration of the project.

Question 4. The Commission solicits comments on the suitability of alternative criteria for proposed 63.44. These alternative criteria are included in the statement of considerations discussion of proposed 63.44 and are substantially equivalent to that proposed last year for nuclear reactors and spent fuel storage facilities.

Comment: The alternative criteria in the statement of consideration for 63.44 appear to clarify beneficially the issues involved in changes, tests, and experiments by providing definitions for key elements and expanding the list of specific criteria. We are concerned that the word "nonconservative" in the description of the meaning of "Reduction in margin of safety associated with any license specification" could be open to a range of interpretation. The intended meaning could be further clarified, as could be the intent of the word "minimal" as used throughout 63.44(b)(2).

Question 5. The Commission solicits comments on whether the approach and criteria for changes, tests, and experiments at 63.44 should apply solely to the Safety Analysis Report or to the contents of the entire license application, irrespective of whether the proposed 63.44 or the alternative criteria presented in the statement of consideration are selected.

Comment: The criteria for changes, tests, and experiments should apply to the entire license application in order to assure that the entire application is maintained as a current reference document for those overseeing the project, including the Commission and all parties to the licensing proceeding, and for the public.

Additional Comments:

Land Ownership and Control, including Water Rights

Section 63.121(c) states that water rights are considered to be part of Section 63.12.(b). If that is the case, Section 63.121(b) should directly state that additional controls include water rights.

The rule should also state that DOE must conform to state water law, which requires DOE to show beneficial use for the water. DOE does not have the right to pollute the waters of the state of Nevada. 63.121 should define the role of state water law.

Section 63.121 addresses the issues of water rights and land ownership. One of the portions of the defense in depth strategy is to use the water in the mountain to dilute the radionuclides. The proposed rule gives DOE the right to take water rights in order to achieve waste isolation. This rule gives DOE significant latitude to take water rights in areas far beyond the immediate operations area of the repository. The rule must acknowledge the responsibilities of the federal government for compensation when initiating takings. At the same time we have a concern that this rule permits the spread of radionuclides to areas far outside the boundaries of the repository.

The repository should be designed so that it is not necessary to take people's water rights and livelihoods in order to claim waste isolation and containment.

License to Receive Waste

Section 63.41 states that NRC can issue the repository license to receive waste and allow waste to be put into the repository once it determines that there is enough underground storage space for "initial operation". We believe that that the repository license to receive waste should not be issued until the construction is completed.

Boundary for Compliance with Maximum Radiation Dose Standard

Sections 63.115 and 63.113(b) propose determining compliance with the maximum radiation dose standard at a boundary 12 miles from the emplacement area. The WIPP boundary is 5 kilometers or 3 miles, in conformance with generic repository standards. We believe that there should be uniform standards for repositories and that the Yucca Mountain boundary should be 5 kilometers just as it is at WIPP.

Groundwater Standard

Section 63.113 sets the overall standard at 25 mrem. We understand that the NRC will change this portion of the rule to conform to the EPA proposed standard. Our comment is that because the releases from Yucca Mountain are likely to be in the groundwater, the 4 mrem standard in the Safe Drinking Water Act, which applies at WIPP, could be exceeded. We believe the standard for Yucca Mountain should be the same as for WIPP.

Risk Assessment

One troubling part of this rule and of the NRC's approach is to explain the risks from Yucca Mountain in relation to other risks. The NRC is pushing for an approach that points out how much more exposure persons are receiving from other sources. For residents of an area who are being forced to be exposed to an unwanted project, the relative risk argument is not helpful or persuasive. The most persuasive way to explain the risk is to design a project that does not result in exposures.

Conclusion

In closing, we again recommend that this proposed rule be withdrawn and that once new EPA standards for a Yucca Mountain repository are promulgated, the Commission's existing repository licensing rule, 10 CFR Part 60 be modified, if necessary, to be consistent with the new EPA standard.