

July 14, 1998

NOTE TO: John Pfeiffer
Office of Management and Budget

Beverly Hartline
Office of Science and Technology Policy

FROM: Michael Weber [Original signed by]
Nuclear Regulatory Commission

SUBJECT: BACKGROUND ON HIGH-LEVEL WASTE REPOSITORY AUTHORIZATION
PROCESS

In response to your request at our July 7, 1998, meeting, please find attached a briefing sheet on the high-level waste (HLW) repository authorization process. The briefing sheet identifies potential constraints in Nuclear Regulatory Commission regulations and the Nuclear Waste Policy Act that could impact the early siting and operation of spent fuel storage facilities as part of the surface facilities of the HLW repository. If you have any questions, please contact Bill Reamer at (301) 415-1640 or me at (301) 415-6708.

Attachment: As stated

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Background Points on HLW Repository Authorization Process

Question: Are there potential constraints in NRC regulations or the Nuclear Waste Policy Act that could impact early siting and operation (in advance of the repository) of spent fuel storage facilities as part of the surface facilities of the repository?

Answer:

1. Nuclear Waste Policy Act of 1982:

- DOE cannot construct a monitored retrievable storage facility in Nevada. NWPA, §145.
- DOE site characterization activities are limited to those necessary for evaluating site suitability, for a repository construction authorization, and for NEPA. Possession of spent fuel cannot exceed 10 metric tons and needs NRC concurrence. NWPA, §113(c).
- The President must recommend and Congress permit the site designation to take effect before DOE submits a construction authorization application. NWPA, §114(b).
- NRC is to consider a DOE application for a construction authorization for "all or part of a repository" in accordance with applicable laws. NWPA, §114(d).

2. Existing NRC regulations (10 CFR Part 60) (Subject to Revision under Energy Policy Act)

- DOE cannot commence construction of the repository, including surface facilities, unless NRC has issued a construction authorization for the repository. 10 CFR 60.3(b).
- Before issuing such a construction authorization, NRC must find reasonable assurance spent fuel can be safely disposed of in the proposed repository. 10 CFR 60.31.
- DOE cannot possess spent fuel at a repository, including surface facilities, unless NRC has issued a license to possess spent fuel at a repository. 10 CFR 60.3(a).
- Before issuing such a license, NRC must find construction of the repository has been "substantially completed" in conformity with the license application. 10 CFR 60.41.

"Substantially completed" can mean "(1) surface and interconnecting structures, systems, and components, and (2) any underground storage space required for initial operation are substantially complete."

- NRC may grant an exemption from the foregoing regulations that is authorized by law, consistent with public health and safety and common defense and security, and otherwise in the public interest. 10 CFR 60.6.
- DOE may be required under existing law to supplement its repository EIS if it makes a substantive change in its proposal relevant to environmental concerns. 10 CFR 51.67.
- An MRS authorized by section 142(b) of NWPA may not be constructed in the State of Nevada. 10 CFR 72.96.