

PROCEDURAL AGREEMENT BETWEEN THE NUCLEAR REGULATORY COMMISSION AND THE U.S. DEPARTMENT OF ENERGY IDENTIFYING GUIDING PRINCIPLES FOR INTERFACE DURING GEOLOGIC SITE INVESTIGATION AND SITE CHARACTERIZATION

This Procedural Agreement outlines procedures for staff consultation and exchange of information which the Nuclear Regulatory Commission and the U.S. Department of Energy (DOE) and its designated contractors will observe in connection with the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982, as amended (NWPAA). The purpose of these procedures is to assure that an information flow is maintained between the two agencies which will facilitate the accomplishment by each agency of its responsibilities relative to site investigation and characterization under the NWPAA. The agreement is to assure that NRC receives adequate information on a timely basis to enable NRC to review, evaluate, and comment on those DOE activities of regulatory interest in accordance with DOE's project decision schedule and thereby facilitate early identification of potential licensing issues for timely resolution. The agreement is to assure that DOE has prompt access to NRC for discussions and explanations relative to the intent, meaning and purpose of NRC comments and evaluations of DOE activities and so that DOE can be aware, on a current basis, of the status of NRC actions relative to DOE activities.

This Procedural Agreement shall be subject to the provisions of any project decision schedule, or any schedules specifically related thereto, that may hereafter be established by DOE, and any regulations that may hereafter be adopted by NRC, pursuant to law. In particular, nothing herein shall be construed to limit the authority of the Commission to require the submission of information as part of a general plan for site characterization activities to be conducted at a candidate site or the submission of reports on the nature and extent of site characterization activities at a candidate site and the information developed from such activities. In accordance with 10 CFR 60.18(1), no action taken pursuant to this agreement shall be deemed to constitute a commitment to issue any authorization or license, or in any way affect the authority of the Commission, its officers, and staff, in any licensing proceeding.

1. NRC On-Site Representatives

As early as practicable following area phase field work, NRC on-site representatives will be stationed at any site undergoing investigation principally to serve as a point of prompt informational exchange and consultation and to preliminarily identify concerns about such investigations relating to potential licensing issues.

2. Interactions

From the time this agreement is entered into, and for so long as site characterization activities are being planned or are in progress, DOE and NRC will schedule and hold interactions periodically as provided in this section. Interactions are classified as technical meetings, technical exchanges, site visits, or licensing and management meetings. A written report agreed to by both DOE and NRC will be prepared for each interaction.

- a. Technical meetings will be held between DOE and NRC technical/licensing staff to: review and consult on interpretations of data; identify potential licensing issues; agree upon the sufficiency of available information and data; and agree upon methods and approaches for the acquisition of additional information and data as needed to facilitate NRC reviews and evaluations and for staff resolution of such potential licensing issues. Technical meetings may be a forum for the expression of technical/regulatory policy, negotiation of commitments and an agreement on the acceptability of actions on the part of both agencies.
- b. Technical exchanges will be held between DOE and NRC technical/licensing staff to: discuss a specific technical and/or regulatory topic within their areas of expertise (e.g., geology, hydrology, seismology, waste package design, repository design). The primary purpose of a technical exchange is to promote a better mutual understanding of the topic prior to an officially established technical or regulatory position. For example, a discussion of the mechanism of a process, the occurrence of a particular event, or the technical aspects of regulatory interpretations is appropriate for discussion during a technical exchange. Technical exchanges will not be used as a forum to officially establish or change technical and/or regulatory positions, or extract commitments, or agree to courses of action.
- c. Site visits will be held between DOE and NRC technical staff to: explain technical information related to ongoing field or laboratory site characterization activities; and visit locations at the site for field briefings and discussions of preliminary data and interpretation derived from ongoing work. The primary purpose of a site visit is for both agencies to benefit from discussion of technical topics in the field. The itinerary for site visits will be developed and noticed similar to a technical exchange agenda. The documentation requirements for the proceedings of site visits are not the same as for technical exchanges, due to the formative nature of preliminary data and interpretations. Site visits will not be used as a forum to officially establish or change technical and/or regulatory positions, establish commitments, nor agree to courses of action. Proceedings covered by Appendix 7 of the "Agreement Between the U.S. Department of Energy Office of Civilian Radioactive Waste Management and the Nuclear Regulatory Commission Division of High-Level Waste Management During Site Characterization Programs and Prior to the Submittal of an Application for Authorization to Construct a Repository" (hereafter referred to as the Repository Project-Specific Agreement) do not apply to site visits.
- d. Licensing and management meetings will be held whenever necessary, but at least semi-annually, to review the summary results of the technical interactions; to review the status of outstanding concerns and issues; to discuss plans for resolution of outstanding items and issues; to update the schedule of technical meetings and other actions needed for staff resolution of open items regarding site characterization

programs; and to consult on what guidance is advisable and necessary for NRC to prepare. Unresolved management issues will be promptly elevated to upper management for resolution. Licensing and management meetings are conducted to discuss major nontechnical issues related to program policy, schedules, scope, and major commitment of resources. Any commitments that are made during the meeting will be documented into formal correspondence by the party(ies) making the commitments.

- e. Early interactions will be scheduled as needed to discuss written NRC comments on DOE documents such as Study Plans, DOE's semi-annual progress reports, and technical reports to foster a mutual understanding of comments and the information or activities needed for staff resolution of the comments.
- f. In formulating plans for activities which DOE will undertake to develop information needed for staff resolution of potential licensing issues, DOE will meet with NRC to provide an overview of the plans so that NRC can comment on their sufficiency. These discussions will be held sufficiently early so that any changes that NRC comments may entail can be duly considered by DOE in a manner not to delay DOE activities.
- g. Schedules of activities pertaining to interactions will be made publicly available. Potential host States, affected units of local government, and affected Indian Tribes will be notified and invited to attend interactions covered in this section (Section 2, Interactions). The notification will be given on a timely basis by NRC 10 working days prior to the interaction, where possible. These interactions will be open, with members of the public being permitted to attend as observers.

3. Timely Release of Information

- a. Data collected during site investigations will be made available to NRC on a current, continuing basis after DOE (or DOE contractor) performs internal checks that are inherent in determining that the data were obtained and documented properly, in accordance with applicable quality assurance requirements and procedures.
- b. DOE's analyses and evaluations of data will be made available to NRC in a timely manner.
- c. DOE will provide, in a timely manner to NRC, controlled copies of any specially developed computer programs used in making site characterization analyses, performance assessments, or design analyses.

4. Samples

In accordance with Appendix 2, "Acquisition of Samples During Site Characterization Activities by NRC Contractors," of the Repository Project-Specific Agreement and applicable DOE controlled administrative

procedures, DOE will provide NRC with samples to be used by NRC for independent analysis and evaluation." Controlled copies of the applicable procedures shall be provided to the NRC's Director, Repository Licensing and Quality Assurance Project Directorate or designee.

5. Agency Use of Information

It is understood that information made available to either agency under this agreement may be used at that agency's option in carrying out its responsibilities.

6. Project Specific Agreements

Specific agreements will be developed for each project and site under investigation.

7. Consultations

Nothing in this agreement shall be construed as limiting forms of informal consultation not mentioned in this agreement (for example, telephone conversation or exchanges of reports). These other consultations will be documented in a timely manner.

8. QA Audits and Surveillances

NRC staff, and consistent with security access and safety rules, representatives from affected units of State, local governments, and Indian Tribes, will be permitted to observe DOE QA audits and surveillances. In addition, the NRC may perform audits of DOE and participant QA programs.

Signature Blocks



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