

memorandum

DATE: SEP 18 1987

REPLY TO:
ATTN OF: RW-223

SUBJECT: DOE Meeting With States and Indian Tribes, October 1, 1987,
Dallas, Texas

TO: Distribution

Attached is the final agenda and reference package for the October 1, 1987, Department of Energy Meeting with States and Indian Tribes in Dallas, Texas.

This meeting will be held at The Grand Kempinski Hotel, 15201 Dallas Parkway, in Dallas, (214) 386-6000. If you have any questions, please contact Barry Gale or Judy Leahy at (202) 586-1116.

I am looking forward to seeing you in Dallas.



Stephen H. Kale
Associate Director for
Geologic Repositories
Office of Civilian Radioactive
Waste Management

Attachment

8712100165 870918
PDR WASTE PDR
WM-1

88132249, Bak
WM Project: WM-1
PDR w/encl
(Return to WM, 623-55)

WM Record File: 109
LPDR w/encl



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R. Halfmoon, Nez Perce Indian Tribe
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D. Wolfe, CTUIR
B. Yallop, Yakima Indian Nation

9/18/87

DOE MEETING WITH STATES AND INDIAN TRIBES

Dallas, Texas
October 1, 1987

AGENDA

<u>Time</u>	<u>Item</u>	<u>Responsibility</u>	<u>Purpose</u>	<u>Reference</u>
8:30 a.m.	Welcome	DOE, State, and Indian Tribal representatives	Welcome and introduce participants	
8:45	Purpose of meeting	Moderator	Explain purpose and format of meeting	
8:50	Review of commitments from Las Vegas meeting	B. Gale	Report on status of commitments	List of commitments
9:10	Personnel changes	J. Bresee	Provide update	
9:20	Site Characterization Plans			Proposal for Release of the Site Characterization Plans
	o Overview of Consultative SCPs	R. Stein	Status and discussion	
	o Inputs for Consultation Workshops	S. Kale	Seek guidance from States and Indian Tribes	
10:20	B R E A K			
10:40	Status of oversight programs	Washington State Department of Ecology Washington State Legislature CTUIR Nez Perce Indian Tribe Yakima Indian Nation State of Oregon	Provide status reports and results from grant activities	
11:45	Public question and answer session	Moderator with DOE, State, and Indian Tribal officials	Provide opportunity for the public to obtain information	
12:30 noon	L U N C H			

DOE MEETING WITH STATES AND INDIAN TRIBES

Dallas, Texas
October 1, 1987

AGENDA (continued)

<u>Time</u>	<u>Item</u>	<u>Responsibility</u>	<u>Purpose</u>	<u>Reference</u>
1:30 p.m.	Status of oversight programs (continued)	State of Nevada State of Texas State of Louisiana State of Mississippi State of Utah	Provide status reports and results from grant activities	
2:30	Budget update			
	o DOE FY '88 plans	S. Rousso	Status and discussion	
	o State and Indian Tribal FY '87 expenditures and carryovers	S. Rousso	Status and discussion	
3:15	B R E A K			
3:30	Status of proposed legis- lation effecting program	G. King	Provide information	
3:45	Options for future meetings	T. Isaacs	Discussion	
4:15	Wrap-up and review of commitments from this meeting	Moderator	Obtain agreement on commitments from this meeting	
4:45	Public question and answer session	Moderator with DOE, State, and Indian Tribal officials	Provide opportunity for the public to obtain information	
5:30	A D J O U R N			

REFERENCE PACKAGE

DOE MEETING WITH STATES AND INDIAN TRIBES

OCTOBER 1, 1987

DALLAS, TEXAS

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- o COMMITMENTS FROM THE MAY 28, 1987 LAS VEGAS MEETING

- o PROPOSAL FOR RELEASE OF THE SITE CHARACTERIZATION PLANS

- o ERIC FYGI LETTER DATED AUGUST 28, 1987 TO JIM MATTOX REGARDING COURT OF APPEALS DECISION ON EPA'S ENVIRONMENTAL STANDARDS FOR MANAGEMENT AND DISPOSAL OF SPENT NUCLEAR FUEL, HIGH-LEVEL, AND TRANSURANIC RADIOACTIVE WASTE

Commitments from the DOE Meeting with States and Indian Tribes
Las Vegas, Nevada, May 28, 1987

1. DOE will provide copies of the Udall hearing transcript to the States and Indian Tribes when it is released by Congress (Portland #12).
2. DOE will provide all SCP reference documents at the same time the SCPs are released (confirmation of Spokane #12).
3. Since all of the States and Indian Tribes were not invited to the Technical Code Coordinating Group (TCCG) meeting held on May 21-22, DOE will provide all TCCG meeting materials to the States and Indian Tribes. In the future DOE will ensure that all of the States and Indian Tribes receive invitations to all coordinating group meetings.
4.
 - a. DOE will provide summary information on the purpose of the technical coordinating groups to the States and Indian Tribes.
 - b. DOE will also provide the charters of the coordinating groups when they are available.
5. The Spokane meeting commitments that remain to be completed by DOE are #2 and #4.
 - a. For Spokane #2, DOE will continue to work on the master calendar and set up a formal process to update and distribute the calendar to the States and Indian Tribes.
 - b. Spokane #4 is that BWIP will meet with the State of Washington and the Indian Tribes to discuss the study on the diameter of the exploratory shaft that is reflected in the Mission Plan Amendment.
6. BWIP will provide the charge that is given to the hydrology task group to the States of Washington and Oregon and to the Indian Tribes before task group work begins.
7. DOE will consider including representatives of the States of Washington and Oregon and of the Indian Tribes on the EWIP hydrology task group.
8. SRPO will provide a status report on the 75-foot elevation change and any other pertinent changes relative to the Exploratory Shaft Facility in the baseline. SRPO will recheck the baseline distribution process and provide an analysis to the State of Texas within three weeks.
9. S. Kale will review with OGR staff the request of the States and Indian Tribes for an extension from a 90-day SCP public review schedule to a six-month review schedule, and report back to the States and Indian Tribes.
10. DOE will consider how to indicate in the SCP where changes have been made in the draft SCP chapters that were sent to the States, Indian Tribes, and the NRC for review.

11. DOE will consider the ideas on SCP outreach that were proposed by the States and Indian Tribes (see Las Vegas meeting highlights), and the Project Managers will work with the States and Indian Tribes to develop an SCP outreach program.
12. DOE will consider how to implement a process for coordinating the issuance of the Environmental and Socioeconomic Monitoring and Mitigation Plans and the Environmental Compliance Plans with the SCP as part of an integrated program of public review and comment. Also, DOE will consider issuing a policy statement to support the necessity of this integrated program.
13. As recommended by the States and Indian Tribes, the Mission Plan Amendment will not define the consultation and cooperation (C&C) process. The Amendment will make references to: past C&C negotiations under Section 117c of the NWPA; the possibility of interim and/or partial agreements; and to the fact that generic negotiations are not acceptable.
14. DOE will work with the States and Indian Tribes to establish a forum and format by which DOE and the States and Indian Tribes will develop operating principles governing consultation and cooperation between the States and Indian Tribes and DOE. The format will involve joint review of relevant materials designated by DOE and the States and Indian Tribes.
15. The Mission Plan Amendment description of past negotiations will be revised to reflect comments by the State of Washington.
16. R. Gale will contact the Nez Perce, Umatilla, and Yakima representatives to obtain comments on the Mission Plan Amendment description of C&C negotiations with each of the Indian Tribes.
17. The next DOE Meeting with the States and Indian Tribes is tentatively set for September 30 in Dallas, Texas. (After the May 28 meeting, the date for the next meeting was changed to October 1.)

Proposal for Release
of the Site Characterization Plans

The Department has had a number of discussions with the States and Tribes, the Nuclear Regulatory Commission (NRC) and members of Congress over the past two years regarding the release of the Site Characterization Plans (SCPs) for review and comment by the affected parties and the public. It has been the Department's position that the comment period would encompass 90 days from release of the SCPs with public hearings and briefings scheduled about midway, to receive both oral and written comments. Prior to release of the SCPs the Department planned to, and has, released drafts of chapters and sections, as they become available, to provide early access to the developing document. As a final step in the process, following the close of the 90 day comment period, the Department would evaluate the comments and prepare and release a comment response document.

During these discussions the following concerns have been raised:

- A. The 90 day comment period would not be sufficient to allow for an adequate review and comment given the length of the SCP and the technical complexity of the document.
- B. Early access to draft chapters coupled with unavailability of references does not permit an integrated review of the document, particularly when Chapter 8 is not available until just prior to the start of the comment period.
- C. The parties indicated an inability to secure and manage the resources needed to review and comment in an orderly way within 90 days.
- D. The States and Tribes, in particular, expressed a strong desire to review the Department's Environmental and Socioeconomic Monitoring and Mitigation Plans (MMP's) concurrently with the SCPs and all parties expressed a preference for the simultaneous availability of all 3 SCPs.

As a result of these discussions with the parties, it has become apparent that existing plans for release of the SCP's need to be reconsidered. As a result of this reconsideration, OGR developed a revised approach. Specifically, OGR believes the best interest of all the parties would be served by conducting an initial consultation process on the SCPs with the States, Tribes, and the NRC. To this end, OGR proposes that the Department simultaneously release all three SCPs as consultation drafts, along with the monitoring and mitigation plans. This step and the process which follows should result in alleviating the concerns expressed above by:

- A. Providing an advance forum for the Department to explain the document, its organization, content and plans for testing.
- B. Consulting with the parties on any issues identified, and if possible, reach resolution.
- C. Permitting time for the parties to prepare for review of the draft documents.
- D. Providing a more meaningful public review of the SCPs since it will follow consultation on the drafts; also availability of all 3 drafts will enhance project comparability.
- F. Allowing the reviewers to cross check the MMP's against the SCP's.

The process for release of the consultation drafts has been developed to encourage full participation by the parties including the NRC. We anticipate that the results will be significantly enhanced SCPs for review and comment by the public during the subsequent 90 day comment period. Issues should be more focused and in some cases maybe even resolved, thus greatly facilitating the public review process.

Process

1. The SCPs would be released as consultation drafts on January 8, 1988. This date was selected to provide time for internal Department review of the drafts and will permit all 3 consultation draft SCPs to be issued at the same time. Also, at that time a full set of references will be available for review. The Environmental and Socioeconomic Mitigation Plans (MMPs) will be released concurrently so a "total picture" of site characterization will be available.
2. Consultation workshops will be held with State, Indian Tribe and NRC representatives in January, February, and March 1988. These workshops will provide a forum to explain the documents, address and to the extent possible, resolve issues, and to receive questions and comments. The workshops will be at locations decided upon after consultations with the parties.
3. At some time shortly after the last workshop, the Department would close out the consultation period and, after consideration of comments, proceed to prepare the SCPs with a scheduled date determined by the results of the consultation period. Subsequently, there will be a 90 day public review with public hearings, as called for by the NWPA.

4. The Department would continue to plan for and perform surface based testing during and after the consultation phase. Data gathered during this period, and beyond, would be shared with the parties, and plans for these activities will be provided to interested parties through the SCP study plans, following the process described in the agreements from the DOE/NRC meeting on May 7 and 8, 1986.

It is expected that this process will not measurably affect the start of exploratory shaft construction at BWIP and Salt and may result in no more than a 3 month delay in Nevada. This proposal will not require a change in the schedule in the Mission Plan.



Department of Energy
Washington, DC 20585

RW
HQO.870901
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August 28, 1987

Honorable Jim Mattox
Attorney General
State of Texas
Supreme Court Building
Austin, Texas 78711-2548

Dear Mr. Attorney General:

This letter responds to your letter to Secretary Herrington of July 21, 1987, regarding the recent Court of Appeals decision involving the Environmental Protection Agency's (EPA) Environmental Standards for Management and Disposal of Spent Nuclear Fuel, High-Level, and Transuranic Radioactive Waste. Your letter suggested that the potential impact of the decision on the Department of Energy's waste repository siting program under the Nuclear Waste Policy Act of 1982 warranted suspension of site-specific site characterization activities.

The Department shares your concerns regarding the efficient use of government resources. The Department of Justice has not yet made any decision on further review of the court's decision, however, and until the decision in that case is final, and EPA responds with whatever action may be necessary, it would be premature and speculative on our part to take any action modifying the first repository program. I can assure you, however, that the Department is committed to monitoring the developments following the decision and responding to them in a timely manner.

Sincerely,

Eric J. Fygi
Acting General Counsel

cc: Honorable Albert G. Bustamante
House of Representatives
Washington, D.C. 20515

fm