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COVER SHEET

U.S. DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
YUCCA MOUNTAIN SITE CHARACTERIZATION OFFICE

Docket Number RW-RM-96-100
General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories
Notice of Proposed Rulemaking (NPR)

DISTRIBUTION AT HEADQUARTERS:

Bob Waxman, GC
Chris Einberg, RW
DOE FOI Reading Room
Docket File

3 Copies of items marked "FOI Only" were provided to you at the Las Vegas Hearing.

CLOSE OF COMMENT PERIOD: March 17, 1997

TODAY'S DATE:

ATTACHED WRITTEN COMMENT(S)/DOCUMENTS:

1. Agenda (FOI only)
2. Attendee Sheets, Afternoon & Evening Sessions (FOI only)
3. Opening Statement (FOI only)
4. Federal Register Notice
 - December 6, 1984 (FOI only)
 - December 16, 1996 (FOI only)
 - February 3, 1997
5. DOE News - Press Release, December 16, 1997 (FOI only)
6. Copies of Oral Testimony at the Public Hearing on January 23, 1997 (FOI only)
7. Public Comment Log
8. Public Comments
 - #1-6 (FOI only)
 - #7-14

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Note: The original written comments are located in the official agency docket file currently being held by Bob Murray at the Yucca Mountain Site Characterization Project Office in Las Vegas, NV. (702) 295-4894. Andi Kasarsky is coordinating distribution for DOE Forrestal, (202) 586-3012.

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PDR WASTE
WM-11 PDR



**U.S. DEPARTMENT OF ENERGY (DOE)
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT (OCRWM)
YUCCA MOUNTAIN SITE CHARACTERIZATION OFFICE (YMSCO)**

PUBLIC HEARING AGENDA

**Notice of Proposed Rulemaking (NPR)
~~General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories~~**

Docket No. RW-RM-96-100

January 23, 1997 - Las Vegas, NV

Afternoon Session: 12:30 p.m. - 4:30 p.m.

Evening Session: 6:00 p.m. - until last speaker finished

Moderator

Stephen Rice

**Associate Provost of Research
University of Nevada at Las Vegas**

DOE Hearing Panel

Carol Hanlon

**Presiding DOE Official
Physical Scientist, YMSCO**

Susan Rives

Chief Counsel, YMSCO

Allen Benson

Director of Institutional Affairs, YMSCO

SCHEDULE OF PRESENTATIONS
Evening Session: 6:00 p.m. - until last speaker finished

Opening Remarks

Time

Stephen Rice

Moderator

6:00 p.m.

Carol Hanlon

Presiding DOE Official

Schedule of Speakers

Representing (if applicable)

Time

1. Tom McGowan

Self

6:30 p.m.

2. **Unscheduled Speakers and Rebuttal/Clarifying Statements**

U.S. DEPARTMENT OF ENERGY
 OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
 YUCCA MOUNTAIN SITE CHARACTERIZATION OFFICE
 General Guidelines for the Recommendation of Sites For Nuclear Waste Repositories (NOPR)
PUBLIC HEARING ATTENDEES
 January 23, 1997 Las Vegas, NV

Evening session

<u>NAME & TITLE</u> (Please Print)	<u>COMPANY/ASSOCIATION/GOVT/SELF</u> (Please Spell Out Complete Name)	<u>ADDRESS/CITY/STATE/ZIP CODE</u>
<i>William DeRogis</i>	<i>Self</i>	<i>758 Willow Cre Henderson, NV 89015</i>
<i>Joe Miller</i>	<i>Self</i>	<i>3219 D DAUNFLOWER ST. LAS VEGAS, NV 89121</i>
<i>Don DeLongis</i>	<i>self</i>	<i>758 Willow ave Henderson, NV 89015</i>
<i>Mary Olson</i>	<i>NIRS</i>	<i>1424 16R St NW Suite 404 Washington DC 20036</i>
<i>Mary Manning</i>	<i>Las Vegas Sun</i>	
<i>Chris Binzer</i>	<i>Mendian Center</i>	

Evening Session

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OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
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NAME & TITLE (Please Print) <i>unscheduled speaker</i>	COMPANY/ASSOCIATION/GOVT/SELF (Please Spell Out Complete Name)	ADDRESS/CITY/STATE/ZIP CODE
- JOHN WELLS WESTERN SITUATION NATION	WESTERN SITUATION NATION	6983 ANTELL CR LAS VEGAS, NV 89119
James Zimmerman GRAD ASST Ethics & Policy Studies	UNLV	2500 KOREN AVE #4 LV, NV 89121
Robert V. Bartoll	DOE	
DENNIS R. WILLIAMS	DOE	
PAUL HARRINGTON	DOE	
Dean Stucker	DOE	

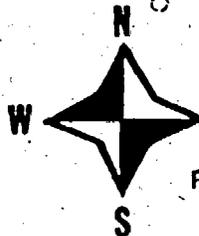
Evening
Session

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<u>NAME & TITLE</u> (Please Print)	<u>COMPANY/ASSOCIATION/GOVT/SELF</u> (Please Spell Out Complete Name)	<u>ADDRESS/CITY/STATE/ZIP CODE</u>
Hal Rogers	Study Committed	Dayton NV
Don Walker	Janus Technologies	6655 W. Sahara Las Vegas
Smk	WEI	DC
Ralph Anderson	NEZ	WASH-DC
John Bartlett	SC&A	
Chris Einberg	DOE	Wash-DC

Evening Session

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DICK TELFER, Ed.S.

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Afternoon session

NAME & TITLE (Please Print)	COMPANY/ASSOCIATION/GOVT/SELF (Please Spell Out Complete Name)	ADDRESS/CITY/STATE/ZIP CODE
<i>Cruz Lopez Laborer</i>	<i>Laborers Local 872</i>	
<i>Antonio Hernandez</i>	<i>LABORER LOCAL 872</i>	
<i>Debbie J Campbell</i>	<i>Laborer Local 872</i>	
<i>Mark Garcia</i>	<i>SAIC 1109 Town Center Dr. MS 423 89139</i>	
<i>NANCY S. CHAPPELL</i>	<i>PHO/Duke</i>	
<i>HARRY W. SWAINSTON DEPUTY ATTORNEY GENERAL</i>	<i>NEVADA ATTORNEY GENERAL</i>	<i>CAPITOL COMPLEX CARSON CITY, NV. 89710</i>

Afternoon
Session

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NAME & TITLE (Please Print)	COMPANY/ASSOCIATION/GOVT/SELF (Please Spell Out Complete Name)	ADDRESS/CITY/STATE/ZIP CODE
Michael G Flores Union Laborer	Laborers Union 872	
Bob Wood LOCAL 12 ORGANIZER	I U O E 12	
Fidel Paga	Attorney General	
Cade Jorgensen	YMCA - PMO	
IAN ZABARTE	W. SHOSHONE GOVT	PO BOX 299 INDIAN SPRINGS NV 89018
Chris Brown <u>SPEAKER</u>	CNI	PO Box 60791 LV NV 89160

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<u>NAME & TITLE</u> (Please Print)	<u>COMPANY/ASSOCIATION/GOVT/SELF</u> (Please Spell Out Complete Name)	<u>ADDRESS/CITY/STATE/ZIP CODE</u>
Richard Robbins IRONWORKER	IRONWORKER # 417	560 Engel Ave Henderson NV 89015
MARY MANNING	L.V. SUN NEWSPAPER	800 S. VALLEY VIEW BLVD. LV NV 89107
WILLIAM VASCONI	CON. UNIONS CRAFTSMAN ELECTRICIAN BY TRADE	6565 RTWOOD RUE LAS VEGAS NEVADA 89108
Robert V Barton	DOE	
SZYMANSKI JERRY S.	TRAC-NA	1572 Silver Mesa Las Vegas NV 89109
NANDA McCHONAGHAN	SELF	1155 E. FLAMINGO #145 89119

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NAME & TITLE (Please Print)	COMPANY/ASSOCIATION/GOVT/SELF (Please Spell Out Complete Name)	ADDRESS/CITY/STATE/ZIP CODE
NASSIL VASSILEFF	TROTWORKER	1500 E KAREM #301 LOS VEGAS NV 89109
Bernard J. Varne	DOE	YMSCO Las Vegas
Dennis R. Williams	DOE/YM	
Mike DeFloria	self	3213 Palmdale Las Vegas 89121
Larry Bue	self	6917 Emerald Sp. Las Vegas NV 89112
Randy Harness	SIERRA CLUB	6250 W. FLAMINGO #23 LV 89103

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<u>NAME & TITLE</u> (Please Print)	<u>COMPANY/ASSOCIATION/GOVT/SELF</u> (Please Spell Out Complete Name)	<u>ADDRESS/CITY/STATE/ZIP CODE</u>
CHUCK CHAVISZ	IRON WORKER. #416	L.V. N.V.
TB, II BEZICE	U.S. NUCLEAR REG. COMM.	LV. 89117
Chad Allen	U.S. Nuclear Reg. Comm.	LV 89117
Robert CHRISTIAN	Citizen	LV. 89109
JOHN ROSENTHAL	CEWMS PMO	LV 89014
Jim Downport	Nevada Atty Gen	LV 89101

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<u>NAME & TITLE</u> (Please Print)	<u>COMPANY/ASSOCIATION/GOVT/SELF</u> (Please Spell Out Complete Name)	<u>ADDRESS/CITY/STATE/ZIP CODE</u>
Dr. Robert W. Bass Prof. Physics & Astronomy	self (retired) (Speaker #11)	P. O. Box 1238 Pahump, NV 89041
Chris Einberg DOE/HQ Regulatory Coordination Division	U.S. DOE	1000 Indep. Ave, SW Wash. DC 20580
Reinard Krutzen	Sh... ..	5007 E. Imhurst Las Vegas NV 89108
Fidel JAQUEZ	Labors 872	1404 Arthur Nev 89101
SIXTO HERNANDEZ	LABOR'S 872	93. E RENO AVE #6 Las Vegas Nev 89119
ANTONIO HERNANDEZ	LABOR'S 872	93. E RENO AVE APT #6 LAS VEGAS NEV 89119

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<u>NAME & TITLE</u> (Please Print)	<u>COMPANY/ASSOCIATION/GOVT/SELF</u> (Please Spell Out Complete Name)	<u>ADDRESS/CITY/STATE/ZIP CODE</u>
Joe Rodriguez	Labares Local 872	
JAMES M'GUINNESS	SAVE WARD VALLEY SHUNDATAI NETWORK	5007 ELMHURST L.V. NV. 89108
Abby Johnson COAST	Eureka County, NV	617 Terrace Carson City NV 89703
Tanju Khtschoglu	UNLV	
Joseph Ruggieri	Interested citizen	6530 Annie Oakley Drive #2518 Henderson, NV 89014
Herman Pennington	Self	8224 CARMEN BLVD LAS VEGAS NV 89128

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JOHN HASBURN	I 40 E # 12 360 Shadow Ln L V. Nev. 89106	
GEORGE BAMM	I 40 E # 12 360 SHADON LN LV NV 89106	
ROBERT PADILLA	I B O E # 12 360 Shadow Lane LV 89106	
Kevin Shenk	SAIC 1180 Town Center Dr, Las Vegas NV MS 423, 89139	

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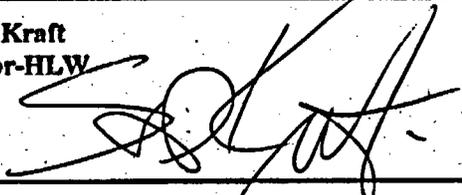
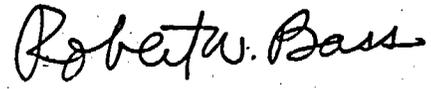
<u>NAME & TITLE</u> (Please Print)	<u>COMPANY/ASSOCIATION/GOVT/SELF</u> (Please Spell Out Complete Name)	<u>ADDRESS/CITY/STATE/ZIP CODE</u>
Frankie Sue Del Pappa Attorney General	State of Nevada	<i>Arrived</i>
Robert Loux	State of Nevada	<i>arrived</i>
Dennis A. Bechtel Manager	Clark County Department of Comprehensive Planning, Nuclear Waste Division	<i>Arrived</i>
Hal Rogers Co-Chairman <i>Hal Rogers</i>	Study Committee	<i>arrived</i>
Mary Olson	Nuclear Waste Resource Service	<i>Arrived</i>

U.S. DEPARTMENT OF ENERGY
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PUBLIC HEARING ATTENDEES

January 23, 1997 Las Vegas, NV

NAME & TITLE (Please Print)	COMPANY/ASSOCIATION/GOVT/SELF (Please Spell Out Complete Name)	ADDRESS/CITY/STATE/ZIP CODE
Rick Nielsen Director	Citizen Alert	<i>Arrived</i>
Fred Dexter 	Sierra Club	<i>arrived</i>
Reverend Chester Richardson Reverend	Urban Planning Institute	<i><u>Cancelled</u></i>
Steven Kraft Director-HLW 	Nuclear Energy Institute	<i>arrived</i>
Tom McGowen 	Self	<i>arrived</i>
Dr. Robert W. Bass Retired Prof. of physics and astronomy-BYU	Self 	<i>arrived</i>

U.S. DEPARTMENT OF ENERGY
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Nick Stellavato <i>N. Stellavato</i>	Nye County	arrived
Chris Brown Director	Campaign for Nevada's Future	arrived
Sally Devlin <i>Sally Devlin</i>	Self	arrived
Grant Hudlow	Self	<u>arrived</u>

Keith Rogers
Staff Writer

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Senior Project Manager

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Marie I. Boutté
Associate Professor

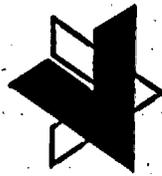
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Joshua Abbey
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Deputy Manager
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U.S. DEPARTMENT OF ENERGY
Yucca Mountain Project

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Speaker
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BOB MILLER
Governor



Speaker

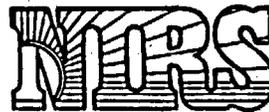
STATE OF NEVADA

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Nuclear Waste Project Office

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Nuclear Information & Resource Service

Speaker

Mary Olson
Radioactive Waste Project

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Speaker
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Repository Project Office
NICK STELLAVATO
On-Site Geotechnical Representative

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Grant Hudlow
Scientist/Owner



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Unscheduled speaker
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Julin Moon Garcia

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SHUNDAHAI: "PEACE AND HARMONY WITH ALL OF CREATION"

Unscheduled speaker
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Judy Treichel
Executive Director

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Carrol Steedman
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U.S. DEPARTMENT OF ENERGY
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
YUCCA MOUNTAIN SITE CHARACTERIZATION OFFICE

PUBLIC HEARING OPENING REMARKS

Notice of Proposed Rulemaking (NPR)
General Guidelines for the Recommendation of Sites For Nuclear Waste Repositories
Docket Number RW-RM-96-100

January 23, 1997 - Las Vegas, NV

Mr. Stephen Rice, UNLV - Moderator

Good afternoon/evening and welcome. I would like to thank you for taking the time to participate in this public hearing concerning the Department of Energy's Civilian Radioactive Waste Program, particularly those of you who have come from some distance. I am Stephen Rice, Associate Provost for Research at the University of Nevada at Las Vegas, and I will be the moderator for this rulemaking hearing. My role as moderator is to keep the public hearing orderly, focused, and on schedule and to ensure that everyone here has the opportunity to present oral testimony. I have volunteered my services to the Department of Energy (DOE) and am not being paid by the Department.

The purpose of this hearing is to receive oral testimony from the public on DOE's Notice of Proposed Rulemaking (NPR) to amend the General Guidelines for the Recommendation of Sites For Nuclear Waste Repositories. While you may have comments about other DOE issues, it is essential that you keep your remarks focused on the proposed rule. If you have not already read the proposed rule in the *Federal Register*, published on December 16, 1996, I urge you to do so. Copies are available at the registration desk. Your comments are not only appreciated, they are essential to the process.

Today's hearing is different from most other meetings held by the Department of Energy for this program in that this is a rulemaking hearing which is governed by a different set of rules, so to speak. Generally speaking, Congress passes a piece of legislation and then turns it over to one or more agencies to write the rules to implement that legislation. The agency will publish its proposed rule or rules in the *Federal Register* and ask the public to comment on them. In a DOE rulemaking, the public has two ways to provide comments: 1) orally at a public hearing, and 2) providing written comments before the end of the comment period. The agency will then consider the comments provided by the public, as well as comments from other Federal agencies, and will then publish a final rule to be codified in the Code of Federal Regulations.

The comments received here today, and those submitted during the written comment period, will assist the Department in the rulemaking process. Please note that although the original notice of

- After all registered speakers have delivered their statements, anyone may make an unscheduled oral statement. Persons interested in making such an unscheduled statement should submit their name to the registration desk before the conclusion of the last scheduled speaker.
- At the conclusion of all scheduled and unscheduled presentations, speakers will be given the opportunity to make rebuttals and/or clarifying statements, subject to time limitations, and will be called in the order in which the initial statements were made. Persons interested in making such a statement should submit their name to the registration desk before the conclusion of the last speaker.
- If time permits at the conclusion of all rebuttals and/or clarifying statements, persons may be given the opportunity to make additional unscheduled statements. Persons interested in making such an unscheduled statement should submit their name to the registration desk before the conclusion of the last rebuttal and/or clarifying statement.
- Finally, clarifying questions will be asked only by members of the hearing panel.

As mentioned earlier, the close of the comment period will be **MARCH 17, 1997**. All written comments received will be available for inspection and copying at: *The Yucca Mountain Science Center, 4101B Meadows Lane, Las Vegas, Nevada, (702) 295-1312*; and at the *Department of Energy's Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, (202) 586-6020*. As a reminder, the Department requests that eight (8) copies of the written comments be submitted. If you have any questions concerning the submission of written comments, please see the staff at the registration desk. In addition, in approximately two weeks, a transcript of this hearing will be made available at both the Yucca Mountain Science Center and the Department of Energy's Freedom of Information Reading Room, and via the Internet at the following address: <http://www.ymp.gov>.

Any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit to the address mentioned above one complete copy and seven copies from which information claimed to be confidential has been deleted. In accordance with the procedures established at 10 CFR 1004.11, the Department of Energy shall make its own determination as to whether or not the information shall be exempt from public disclosure.

In keeping with the regulations of this facility, there will be no smoking in this room.

We appreciate the time and effort you have taken in preparing your statements and are pleased to receive your comments and opinions. I would now like to introduce the members of the hearing panel. Joining us today from the Yucca Mountain Site Characterization Office here in Las Vegas are: *Carol Hanlon*, Physical Scientist; *Susan Rives*, Chief Counsel; and *Allen Benson*, Director of Institutional Affairs. The hearing panel will receive your comments and ask clarifying questions, as necessary, to ensure the record is clear and complete. We also have with us a number of DOE employees who may assist the panel in assuring clarifications are requested when appropriate.

new subpart would be added to the existing regulations to govern the evaluation of Yucca Mountain. The proposed new subpart would use a systems approach and would involve assessing how the engineered parts of the repository would work within the geology of Yucca Mountain. That assessment would then be evaluated against the health and safety standards being developed by EPA specifically for the Yucca Mountain site and applicable NRC regulations. In short, this proposal would focus the suitability decision on whether a repository at Yucca Mountain would protect public health and safety consistent with the requirements of the EPA and NRC. Please note that this proposal does not eliminate any of the guidelines currently in the regulation, but preserves them should general guidelines applicable to site screening and comparisons be needed in the future. In addition, other sections of the guidelines would be revised only as needed to make them consistent with the new subpart.

The hearings today are provided as opportunities for you to provide comments on the proposed amendments. To better understand the proposed amendments, I strongly recommend that you take a few minutes to read the Notice of Proposed Rulemaking, if you have not already done so. Copies are available at the registration desk. If you plan to make oral comments or submit written comments to the Department, please focus your comments *only* on the scope and content of the Notice of Proposed Rulemaking. The Department will not consider general comments on the current regulation at this time. Again, I thank you for your participation.

Mr. Stephen Rice, UNLV - Moderator:

Now it is time to move on to the important business of listening to your comments on the NOPR. I would like to call our first speaker on the agenda. As a reminder, I ask that each speaker please, identify yourself by name, city or town and affiliation before making your statement. Thank you.

DOE NEWS

News Media Contact:
Samantha Richardson, 702/794-5511
Erik Olds, 702/794-1347

For Immediate Release:
December 16, 1996

U.S. Department of Energy Seeks Comment on its Proposal to Amend Siting Guidelines for Yucca Mountain

The U.S. Department of Energy (DOE) today issued a proposal to amend the siting guidelines that it will use to determine the suitability of the Yucca Mountain, Nevada, site for a development of a repository for disposal of spent nuclear fuel and high-level radioactive waste.

The DOE is seeking public comment on these amendments and has scheduled two public meetings. These meetings are scheduled for Thursday, January 23, 1997, at 12:30 p.m. and 6 p.m., and will be held at the University of Nevada, Las Vegas, 4505 Maryland Parkway, Moyer Student Union, Second Level, Lounge #201.

Before DOE may recommend the Yucca Mountain site for the development of a repository, it will need to determine its suitability as a repository site. The guidelines, issued in 1984 as a regulation, require DOE to compare the Yucca Mountain site with other potential repository sites. These guidelines were applied in nominating five sites as suitable for characterization and in recommending that three of these sites be studied. On May 28, 1986, the President recommended three sites for characterization, including Yucca Mountain.

In 1987, the Nuclear Waste Policy Act was amended to provide that Yucca Mountain be the sole site to be characterized. In addition, the Energy Policy Act of 1992 directed the Environmental Protection Agency (EPA) to promulgate standards specifically for the protection of the public from releases from radioactive wastes disposed of in the repository at the Yucca Mountain site. The Nuclear Regulatory Commission (NRC) is directed to revise its regulations to be consistent with the EPA's site-specific standards.

Congress directed DOE in fiscal year 1996 to focus on only those activities necessary to assess the performance of a repository at the Yucca Mountain site. DOE responded, in part, by proposing these amendments as part of the Office of Civilian Radioactive Waste Management's revised Program Plan. The amendments proposed today would concentrate the regulatory review on the analyses of overall repository performance at Yucca Mountain. This would enhance the

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-2-

ability of the DOE to provide the public with a more understandable conclusion about the suitability of the Yucca Mountain site for development as a repository. To provide this focus, a new subpart would be added to govern the evaluation of the Yucca Mountain site. Other sections of the guidelines would be revised only as needed to make them consistent with the new subpart. The guidelines applicable to site screening and comparisons will be preserved should they be needed in the future.

The DOE will accept public comments on the proposed siting guideline amendments until February 14, 1997. To register to provide oral comments at the scheduled hearings, please call (800) 967-3477 no later than 4:30 pm PST on January 17, 1997. Members of the public who do not attend the meetings can submit their comments by U.S. mail to April V. Gil, U. S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 98608, Las Vegas, NV 89193-8608, or through electronic mail to 10CFR960@notes.ymp.gov.

-30-

YMP-96-19

Federal Register

Monday
December 16, 1996

Part V

**Department of
Energy**

**Office of Civilian Radioactive Waste
Management**

**10 CFR Part 960
General Guidelines for the
Recommendation of Sites for Nuclear
Waste Repositories; Proposed Rule and
Public Hearing**

DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management

10 CFR Part 960

General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy, Office of Civilian Radioactive Waste Management, today proposes to amend its General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories. The DOE is proposing these amendments to clarify and focus the Guidelines to be used in evaluating the suitability of the Yucca Mountain site in Nevada for development as a repository. This proposal would provide that a total system assessment of the performance of a proposed site-specific repository design within the geologic setting of Yucca Mountain would be compared to the applicable regulatory standards to determine whether this site is suitable for development as a repository.

DATES: Written comments (8 copies and, if possible, a computer disk) on the proposed rule must be received by the Department on or before February 14, 1997. Oral views, data and arguments may be presented at a public hearing which is scheduled for the afternoon (12:30 p.m. to 4:30 p.m.) and evening (6 p.m. until there are no longer persons requesting an opportunity to speak) of January 23, 1997. Requests to speak at the hearing should be submitted in writing or by telephone at (800) 967-3477 to the Department no later than 4:30 P.M. on January 17, 1997. The length of each oral presentation is limited to five minutes. The DOE requests public comments only on the amendatory language in this notice and will not consider comments on the current regulation in this rulemaking proceeding.

ADDRESSES: Written comments (8 copies) and requests to speak at the public hearing should be addressed to April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, PO Box 98608, Las Vegas, NV 89193-8608, or provided by electronic mail to 10CFR960@notes.ymp.gov. The public hearing will be held at the following

location: University of Nevada, Las Vegas, 4505 Maryland Parkway, Moyer Student Union, Second Level, Lounge #201, Las Vegas, Nevada. Copies of transcripts from the hearing, written comments, and documents referenced in this Notice may be inspected and photocopied in the Yucca Mountain Science Center, 4101B Meadows Lane, Las Vegas, Nevada, (702) 295-1312, and the DOE Freedom of Information Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, (202) 586-6020, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. For more information concerning public participation in this rulemaking see the "Opportunity for Public Comment" section of this proposed rule.

FOR FURTHER INFORMATION CONTACT: April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, PO Box 98608, Las Vegas, NV 89193-8608, (800) 967-3477.

SUPPLEMENTARY INFORMATION:

- I. Background.
 - A. The Law.
 - B. Development and Application of the Guidelines.
- II. Description of Proposed Action.
 - A. General Discussion.
 - B. Proposed Revisions.
- III. References
- IV. Opportunity for Public Comment.
 - A. Participation in Rulemaking.
 - B. Written Comment Procedures.
 - C. Public Hearing Procedures.
- V. Compliance with the National Environmental Policy Act (NEPA).
- VI. Review Under the Regulatory Flexibility Act.
- VII. Review Under the Paperwork Reduction Act.
- VIII. Review Under the Unfunded Mandates Reform Act.
- IX. Review Under Executive Order 12612.
- X. Review Under Executive Order 12866.
- XI. Review Under Executive Order 12875.
- XII. Review Under Executive Order 12988.

I. Background

A. The Law

The Nuclear Waste Policy Act of 1982 (hereinafter referred to as the 1982 NWPA), signed into law on January 7, 1983, established a Federal policy and the Department of Energy (DOE) responsibility for the disposal of spent nuclear fuel and high-level radioactive waste in geologic repositories. It established the Office of Civilian Radioactive Waste Management (OCRWM) to carry out these DOE responsibilities, subject to repository licensing by the Nuclear Regulatory

Commission (NRC) and environmental protection standards set by the Environmental Protection Agency (EPA). The 1982 NWPA provided a process and schedule for siting two mined geologic repositories, and the statutory framework by which the DOE would screen, characterize, and select candidate sites. Section 112, "Recommendation of Candidate Sites for Site Characterization," of the 1982 NWPA required the DOE to establish general guidelines for recommendation of sites for repositories (the Guidelines). Section 112(a) required the DOE to "issue general guidelines for recommendation of sites for repositories," following consultation with the Council on Environmental Quality, the Administrator of the EPA, the Director of the Geological Survey, interested Governors, and the concurrence of the NRC. This section also provided that "such guidelines" may be revised from time to time.

The 1982 NWPA provided that the Guidelines would be used by the DOE to identify and nominate at least five sites in different geologic media as suitable for characterization. As part of this screening process, section 112(b) required the Secretary to recommend three of these sites to the President for characterization to determine their suitability for development as a repository.

Section 113, "Site Characterization," of the 1982 NWPA provided that the DOE was to carry out site characterization activities beginning with the candidate sites that had been approved under section 112(b) and that were located in various geologic media. Section 113(b) required the DOE to develop and submit to the Governor of the State, or governing body of the affected Indian tribe, a general plan describing the activities to be conducted in characterizing that site and identifying the criteria, developed pursuant to section 112(a), that would be used to determine the suitability of each site for the location of a repository.

Section 114, "Site Approval and Construction Authorization," of the 1982 NWPA provided that upon completion of public hearings in the vicinity of each site and completion of site characterization at each site, a single site could be recommended to the President for development as a repository. The 1982 NWPA provided that this recommendation by the Secretary to the President was to be accompanied by a final Environmental Impact Statement (EIS) in accordance with the requirements of the National Environmental Policy Act (NEPA), as modified by section 114(f) of the 1982

NWPA. If the recommendation was approved and the designation of the repository site became effective, the DOE was to submit a license application to the NRC for authorization to construct the repository at the designated site.

The 1987 amendments to the 1982 NWPA (the 1982 NWPA, as amended, is hereinafter referred to as the NWPA), provided that site characterization under section 113 and site approval under section 114 could proceed only at the Yucca Mountain site. Section 160 of the NWPA required the DOE to terminate site-specific activities at the other two candidate sites.

B. Development and Application of the Guidelines

To implement section 112(a) of the 1982 NWPA, the DOE published the proposed "General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories," for review and comment on February 13, 1983 (48 FR 5670). The DOE published the final version of the Guidelines on December 6, 1984 (49 FR 47714), after considering public comments, consulting with the designated agencies, and receiving the concurrence of the NRC, as required by the 1982 NWPA.

The NRC concurred on the Guidelines after the DOE agreed to changes that closely linked the Guidelines to the NRC regulatory requirements of 10 CFR part 60 (49 FR 9650). In response to comments requesting closer alignment of the Guidelines to the EPA and the NRC requirements, the DOE stated that,

"In the event of a conflict between the Guidelines and either 10 CFR part 60 (the NRC regulations) or 40 CFR Part 191 (the EPA regulations), these NRC and EPA regulations will supersede the siting guidelines and constitute the operative requirement in any application of the guidelines." (49 FR 47721)

Consistent with section 112(b) of the 1982 NWPA, the DOE used the Guidelines in nominating five sites as suitable for characterization and in recommending to the President the three sites to be characterized as candidate sites for the first repository. On May 28, 1986, the President approved the three sites recommended for characterization, including the Yucca Mountain site. The 1987 amendments to the 1982 NWPA required the DOE to characterize only the Yucca Mountain site, and to terminate site-specific activities at all other sites.

In accordance with section 113(b) of the NWPA, the DOE prepared a Site Characterization Plan (the SCP) (1) for characterizing the Yucca Mountain

site.¹ The SCP included a description of how the DOE proposed to apply the Guidelines within the scope of the planned site characterization program. The applicability of certain comparative provisions in the Guidelines as a result of the 1987 amendments to the 1982 NWPA was explained in the SCP. The DOE stated that the provision in the Guidelines for comparative evaluations of performance (10 CFR 960.3-1-5) was no longer applicable. The DOE also stated that the provision in 10 CFR 960.5-1(a)(3), the preclosure system guideline for Ease and Cost of Siting, Construction, Operation, and Closure, for comparative evaluation of costs relative to other siting options was no longer applicable.

Although the SCP describes how the DOE would apply the Guidelines during site characterization to evaluate the site in light of the 1987 amendments, a number of entities indicated that they remained unclear as to the DOE's future application of the Guidelines. Because of the continuing confusion in this regard, and because section 112(a) of the NWPA, unchanged from the 1982 NWPA, and the Guidelines themselves contemplate that the DOE may revise the Guidelines from time to time, the DOE instituted an ongoing dialogue with external parties about the Guidelines.

In October 1993, the DOE briefed the representatives of the affected units of local government and the State of Nevada on its plans for activities related to site suitability evaluation. The members of this group noted that because the development of the Guidelines received broad public exposure through publication in the Federal Register, the DOE's review of the Guidelines also should receive broad public exposure. In response, the DOE published a Notice of Inquiry on April 25, 1994 (59 FR 19680) eliciting the views of the public on the appropriate role of the Guidelines in the evaluation of site suitability at Yucca Mountain. The DOE then conducted a public workshop on May 21, 1994, in Las Vegas, Nevada, to discuss the Guidelines and other issues related to the process for the evaluation of site suitability. The DOE also provided the opportunity for the public to submit written comments. The comment period ended on June 24, 1994.

Following the public meeting and the close of the public comment period, and after consideration of the comments

¹ The documents mentioned followed by a number enclosed in parenthesis are fully identified in III. References. Documents are numbered only when first referenced.

received, the DOE published a notice in the Federal Register on August 4, 1994 (59 FR 39766), announcing that it would continue to use the Guidelines in 10 CFR part 960, as currently written and as explained in the SCP. The detailed rationale for concluding that the existing Guidelines "should not be amended at this time," was published in a notice in the Federal Register on September 14, 1995 (60 FR 47737). For reasons stated below, the DOE has now determined that the Guidelines should be amended.

II. Description of Proposed Action

A. General Discussion

The DOE is proposing these amendments to clarify and focus the Guidelines to be used in evaluating the suitability of the Yucca Mountain site for development as a repository. The amendments would concentrate the regulatory review on the analyses of overall repository performance. This would enhance the ability of the DOE to provide the public a more understandable conclusion about the suitability of the Yucca Mountain site for development as a repository. To provide this focus, a new subpart would be added to govern the evaluation of the Yucca Mountain site. Other sections of the Guidelines would be revised only as needed to make them consistent with the new subpart. The Guidelines applicable to site screening and comparisons will be preserved should they be needed in the future.

As detailed in the Background section of this Notice, section 112 of the NWPA describes the steps to be taken during site screening and prior to site characterization. The general guidelines required by section 112(a) were developed in 1983 and 1984 when the DOE had only a general understanding of geologic disposal and a mandate to use the general guidelines to screen sites in various geologic media. The DOE then formulated a generic set of guidelines to apply throughout the entire siting process that could be applied to any site, in any type of host rock, and in any geohydrologic setting.

As the DOE recognized in the December 6, 1984, Federal Register notice publishing the Guidelines (49 FR 47714), the decision to recommend sites for the development of repositories must include analyses of expected repository performance. However, because the comparison of characterized sites was then the focal point in the final recommendation decision, the contribution of engineered barriers to the ability of a repository system at each site to contain radioactive waste was

minimized (49 FR 47714, 47729). The DOE response to comments that stressed the importance of using system-analysis techniques, rather than treating each factor (e.g., geohydrology) independently, was that "the final comparisons of the sites are to be based on the system guidelines" (49 FR 47714, 47732). The DOE also explained that Part 960 consisted of general guidelines and that site-specific considerations were not appropriate at that time (49 FR 47714, 47734). The DOE has decided that it is now time for a site-specific evaluation of overall system performance at Yucca Mountain.

Initially, the DOE planned a broad characterization program at Yucca Mountain to ensure that all important scientific and technical issues would be identified and addressed. The DOE recognized that the iterative nature of site characterization would drive the broad-based plan into a more narrowly focused program. Section 113c of the NWPA provides that the DOE may conduct only such site characterization activities as it determines are necessary to evaluate the suitability of Yucca Mountain for submitting a construction authorization application to the NRC and to comply with the National Environmental Policy Act of 1969. That Congress intends the DOE to focus the work at Yucca Mountain on only that which is necessary to determine site suitability was recently reinforced in the Conference Report on the Fiscal Year 1996 Energy and Water Development Appropriations Act, H.R. Rep. No. 293, 104th Cong., 1st Sess. 68 (1995). In the Conference Report the conferees directed the Department to refocus the repository program on completing the core scientific activities at Yucca Mountain and provided that the Department's goal should be to collect the scientific information needed to determine the suitability of the Yucca Mountain site.

On June 12, 1996, OCRWM released its revised Program Plan (2) which addressed the direction of Congress in the Fiscal Year 1996 Appropriation legislation. It also recognized the great deal of progress made in the evaluation and understanding of the Yucca Mountain site since implementing the Civilian Radioactive Waste Management Program Plan (3), published in December 1994. Consistent with the policy direction from Congress, the revised Program Plan explained that as part of Fiscal Year 1996 implementation of the restructured repository program, OCRWM would propose amending the Guidelines to provide a more efficient and understandable process for evaluating the Yucca Mountain site. The

revised Program Plan was endorsed in the Conference Report on the Energy and Water Development Appropriations Act, 1997, H.R. Rep. No. 782, 104th Cong., 2d Sess. 82 (1996), by the conferees directing that the appropriated funds be used in accordance with the revised Program Plan.

Based on the DOE's accumulated knowledge, and significantly enhanced understanding of the Yucca Mountain site and geologic disposal, the DOE has now determined that a system performance assessment approach provides the most meaningful method for evaluating whether the Yucca Mountain site is suitable for development as a repository. The performance assessments (4-6) conducted to date have consistently driven the DOE to focus its evaluation of the Yucca Mountain site on those aspects most important to predicting how the overall system will perform in isolating and containing waste.

The DOE now understands that only by assessing how specific design concepts will work within the natural system at Yucca Mountain, and comparing the results of these assessments to the applicable regulatory standards, can the DOE reach a meaningful conclusion regarding the site's suitability for development as a repository. The proposed amendments to the Guidelines would require a comprehensive evaluation focused on whether a geologic repository at the Yucca Mountain site would adequately protect the public and the environment from the hazards posed by high-level radioactive waste and spent nuclear fuel. This approach would include consideration of technical factors in an integrated manner within the system postclosure and preclosure qualifying conditions. Discrete, independent findings on individual technical factors would not be required.

The proposed amendments would focus the site suitability evaluation of Yucca Mountain on a determination of whether the expected system performance will meet both the site-specific public health and safety standards that the EPA is establishing under section 801 of the Energy Policy Act of 1992 and the applicable NRC regulations. Compliance with these requirements is the core of the approach proposed as subpart E to part 960. The proposed amendments are being submitted to the NRC and the DOE will obtain its concurrence in accordance with 10 CFR 960.1.

1. Congressional Direction

Since the DOE promulgated the Guidelines, Congress has made major changes to the framework for developing a geologic repository. In 1987, the NWPA designated Yucca Mountain as the only potential repository site to be characterized, thereby eliminating the comparison of multiple characterized sites. Although the DOE did not revise the Guidelines at that time, it recognized in its SCP that not all of the technical factors cited in the Guidelines would be equally significant to the evaluation of the Yucca Mountain site.

In section 801 of the Energy Policy Act of 1992, Congress directed the EPA to promulgate new site-specific health and safety standards for protecting the public from radioactive releases at a repository at Yucca Mountain. These standards will replace the general environmental standard for geologic repositories (40 CFR part 191) for application at the Yucca Mountain site. In the Energy Policy Act of 1992, Congress also directed the NRC to revise its regulations to be consistent with the new EPA standards.

In the Conference Report on the Fiscal Year 1996 Energy and Water Development Appropriations Act, Congress directed the Program to focus on only those activities necessary to assess the performance of a repository at the Yucca Mountain site and to collect the scientific information needed to determine the site's suitability (H.R. Rept. No. 293, 104th Cong., 1st Sess. 68 (1995)). The OCRWM responded by revising its Program Plan. Part of the revised Program Plan approach is the development of a proposal to amend the Guidelines for site-specific application at the Yucca Mountain site. Congress indicated its approval of the revised Program Plan in the Conference Report on the Energy and Water Development Appropriations Act, 1997, H.R. Rep. No. 782, 104th Cong., 2d Sess. 82 (1996), by directing "that the appropriated funds be used in accordance with the Civilian Radioactive Waste Management Draft Program Plan issued by the Department in May 1996 * * *"

The DOE is proposing these amendments now in response to the Congressional direction provided as part of the Fiscal Year 1996 appropriation process. The focused approach in this proposal is part of the revised Program Plan that was developed based on Congressional guidance and the technical understanding gained from characterization work performed at Yucca Mountain.

2. Understanding Gained

The DOE has been considering Yucca Mountain as a potential site for a repository since 1978. Formal site characterization studies began following the publication of the SCP in December 1988. The DOE has recently produced results in four major areas fundamental to advancing the ability to evaluate this site, and geologic disposal, to the point that a system approach is now appropriate. These four areas are: (1) Analysis and integration of data collected from the surface-based testing and regional studies; (2) examination of the potential repository horizon made possible by the excavation of the Exploratory Studies Facility (ESF); (3) the site-specific conceptual design of the engineered facilities, both surface and underground; and (4) performance assessment analyses.

The DOE began collecting surface-based test data at the site and from the surrounding region in the late 1970s, as described in the Environmental Assessment (7) and the SCP. In recent years, project scientists have undertaken a concerted effort to analyze and integrate these data in order to formulate a better understanding of the site. Several reports (8-16) issued in 1996 have significantly contributed to that understanding. These analyses involve compiling the data collected and developing process models to describe each of the characteristics of the site. Further, data integration is proceeding from cross-disciplinary discussions among the scientists and through consultations with experts outside of the project. The result is a rapidly evolving understanding of the natural system at the site and how the natural system would function as part of a repository system.

Construction of the ESF has provided the opportunity for direct underground observations and testing. Data obtained from the potential repository host rock, together with the analysis of data from surface-based studies (17-20), have significantly improved the understanding of site conditions. For example, the rock quality at the repository level generally confirms the assumptions upon which the projected area for the statutory limit of 70,000 metric tons of heavy metal was based. No new major faults have been found and some faults, when observed underground, are less structurally significant than expected from surface-based studies.

The DOE has now advanced its site-specific conceptual design (21) to focus on the surface and subsurface facilities, the waste package, and a concept of

operations to describe how an operational repository would function at Yucca Mountain. This focus allows project engineers to develop process models to explicitly analyze such factors as potential repository materials and layout, the thermal load imposed on the system by waste emplacement, and the performance of the engineered barrier system.

The models needed to evaluate repository system performance at the Yucca Mountain site continue to become more detailed and more representative of site conditions and engineered system behavior. Performance assessments are analyses used to predict or estimate the behavior of a system based on a given set of conditions. The assessments take into consideration the inherent uncertainties in the data and models used, and permit the evaluation of the significance of these uncertainties in predicting performance for thousands of years into the future. Performance assessments called "Total System Performance Assessments," were conducted in 1991, 1993, and 1995, and another iteration is underway. The amount of detail in the models and the amount of data available have increased with each iteration.

The results of these performance assessments describe what the repository system will be capable of and how it will function through time. For example, the performance assessments have confirmed that among the most important characteristics of the Yucca Mountain site and its suitability for repository development are the amount of water, the flow pathways, and the rate at which water flows through and away from the repository area. The repository system performance models will enable the DOE to predict, with greater confidence, the way water moves through the site and how this affects repository performance.

By evaluating, through system performance assessments, the conclusions reached from analysis and integration of surface-based test data, the observations and testing in the ESF, and the site-specific advanced conceptual design, the DOE will be able to reach informed conclusions regarding the suitability of the site for development as a repository.

Information on the general approach that the DOE will take in performing this work is available in the 1996 Revision I to the Program Plan. More specific information on the nature and extent of changes to previously planned activities is available in the Progress Reports that the DOE issues semiannually pursuant to section 113(b)(3). The most recently issued

Progress Report (22) was distributed on October 8, 1996.

B. Proposed Revisions

Because section 160 of the NWSA provides that Yucca Mountain is to be the sole site to be characterized by the DOE under section 113 of the NWSA, the proposed amendments would establish a discrete set of site-specific guidelines for evaluating the suitability of Yucca Mountain for development as a repository. The site-specific guidelines proposed for Yucca Mountain would be added to part 960 in a new subpart E. Subpart B, the "Implementation Guidelines," would be amended to reflect the adoption of the new subpart E and provide the procedure and basis for applying the new guidelines in subpart E. Subparts C and D would be retained for potential future application in the event that it is determined that Yucca Mountain is not suitable for development as a repository and other sites are identified as potential candidate sites for site characterization.

The proposed subpart E would focus on the ability of a repository system at the Yucca Mountain site to protect public health and safety by adequately containing and isolating waste, rather than on evaluating each technical aspect of the site independently. This new subpart would represent a change for evaluating Yucca Mountain from the Guideline's general site screening and comparison approach to a site-specific system performance approach.

The results of integrated assessments of system performance in Subpart E would provide a more meaningful indicator of the ability of a repository to protect public health and safety, before and after permanent closure, than would separate evaluations of individual site characteristics. For example, a geologic structural feature that provides a fast pathway for groundwater flow through the mountain may seem a detriment when considered alone but, when considered in conjunction with a specific repository design, may act beneficially by channeling flow away from the waste and thus reducing the potential for ground-water contact with the waste packages.

In conducting performance assessments, the DOE uses computer and mathematical models to evaluate the ability of the geologic repository to contain and isolate high-level radioactive waste. This may include the use of mathematical models of site processes such as water flow in the geologic setting and engineering processes such as corrosion of the waste packages as part of the assessment of

overall repository system performance. To evaluate potential radiation exposure to the public, performance assessments use biosphere models that describe the pathways by which individuals in the vicinity of Yucca Mountain might receive radiation doses. Performance assessments are iterative, so that insights gained from each assessment, together with new scientific and engineering information and improvements in the models themselves, are used to guide subsequent assessments.

The general provisions of subpart A and the implementation guidelines of subpart B would be revised to reflect the addition of the Yucca Mountain site-specific guidelines in subpart E, and to be consistent with the NWP. The proposed revisions would preserve the existing portions of the Guidelines that are applicable to site screening and to comparing sites in varied geologic settings as provided in section 112(a) of the NWP. Additional revisions would be incorporated throughout the Guidelines only as needed to explicitly accommodate the addition of subpart E.

Consistent with the existing structure of the Guidelines, the site-specific guidelines proposed in subpart E would include postclosure and preclosure system guidelines. The postclosure system and preclosure radiological safety system guidelines proposed as "qualifying conditions" in subpart E would be essentially the same as their counterparts in subparts C and D, except that these amendments would recognize the changes in the regulatory standards mandated by the Energy Policy Act of 1992. Because 40 CFR part 191 is no longer the applicable standard for the Yucca Mountain site, the new system performance guidelines would apply the EPA's final rule for site-specific public health and safety standards when they are issued and in effect. The preclosure system guideline would also apply the NRC regulations applicable to Yucca Mountain during the preclosure period.

The original suites of technical guidelines in subparts C and D consider characteristics that might be important at any type of site in any geologic or hydrologic setting and provide a basis for comparing sites. Corresponding technical guidelines are not proposed in subpart E. The performance assessments in subpart E will consider all of the significant technical aspects of the site and demonstrate through sensitivity analyses which characteristics are most important.

The preclosure system guidelines in subpart D, other than the one for radiological safety (§ 960.5-1(a)(1)), were originally intended to provide a

broad basis for site evaluation and for comparisons among multiple characterized sites, prior to site recommendation under the 1982 NWP. Sections 113 and 160 of the NWP now direct the DOE to characterize only the Yucca Mountain site to determine its suitability for development as a repository. In the absence of a need to consider siting alternatives, the DOE is not specifying separate system guidelines for environmental, socioeconomic, and transportation considerations in subpart E, as it did in § 960.5-1(a)(2) of subpart D. The DOE will not require or make findings with regard to such considerations as part of any evaluation of the suitability of the Yucca Mountain site for recommendation. The provisions of subpart D, § 960.5-1(a)(3), relating to the feasibility of constructing, operating, and closing a repository at the Yucca Mountain site also are not incorporated in subpart E. Absent the need to develop a broad basis for comparative evaluations, such considerations are most appropriately dealt with as part of the repository design process and in the evaluation of the performance of any design concept with respect to the radiological protection requirements of the preclosure system guideline in subpart E.

The requirement in § 960.5-1(a)(2) of subpart D to adequately protect the public and the environment from hazards posed by the disposal of radioactive waste is the essence of the preclosure system guideline proposed as § 960.6-2. Separately, as part of the Environmental Impact Statement that will be prepared pursuant to section 114 of the NWP, the DOE will thoroughly explore potential impacts to the environment as a result of developing a repository at Yucca Mountain. The DOE will consider the information presented in the Environmental Impact Statement, and the results of its evaluation of the Yucca Mountain site under subpart E, in making any recommendation that the site be developed.

1. General Provisions (subpart A)

This section of the Guidelines consists of the statement of applicability of the Guidelines and the definitions. Revisions proposed to this section would establish the applicability of the new subpart E to the evaluation of the Yucca Mountain site for development as a repository while preserving the general comparative siting process originally defined in the Guidelines and would remove inconsistencies with the 1987 amendments to the 1982 NWP and the Energy Policy Act of 1992. Revisions are proposed for some of the

definitions to make the terms consistent with the NWP and to accommodate programmatic changes instituted since the Guidelines were written.

Section 960.1 Applicability

The statement of applicability would establish that these are the Guidelines developed in accordance with sections 112(a) and 113(b)(1)(A)(iv) of the NWP. It is the intent of these amendments to continue to apply subparts C and D of 10 CFR part 960 as the General Guidelines providing "the primary criteria for the selection of sites in various geologic media" as required by section 112(a). The comparative aspects of the regulation would be preserved for use if the DOE ever needs to use the process to select other sites for characterization through a comparative screening process.

The proposed amendments would account for the 1987 amendments beginning with the insertion of the words "as amended" after "Nuclear Waste Policy Act of 1982" in the first sentence. Section 113(b)(1)(A)(iv) of the Act would also be referenced in the first sentence to indicate that these Guidelines would contain the criteria to determine the suitability of the candidate site for location of a repository. A new second sentence would be inserted to make explicit that subpart B explains the procedure and basis for applying the guidelines in subparts C, D, and E. The second sentence would now state that the Guidelines in subparts C and D will be used for comparative suitability evaluations made pursuant to section 112(b). The final phrase, "and any preliminary suitability determinations required by section 114(f)" would be deleted because this requirement was removed from section 114(f) by the 1987 amendments. This phrase would be replaced by a new fourth sentence stating that "Only subpart E will be used for evaluating the suitability of the Yucca Mountain site pursuant to section 113(b)(1)(A)(iv)."

These revisions would recognize that the EPA standards promulgated under 40 CFR part 191 no longer apply to the Yucca Mountain site. Section 801 of the Energy Policy Act of 1992 requires the EPA to issue site-specific public health and safety standards as "the only such standards applicable to the Yucca Mountain site." Therefore, the third sentence, stating that these guidelines are intended to complement the requirements set forth in the Act, 10 CFR part 60, and 40 CFR part 191, would be deleted. The fifth sentence is revised to more clearly state that the DOE recognizes NRC jurisdiction for the

resolution of differences between the guidelines and the NRC regulations. The sixth sentence would be deleted as unnecessary.

Section 960.2 Definitions

Revisions to the terms and definitions are proposed to reflect the legislative and programmatic changes since the Guidelines were originally written. The definition of the term "Act" would recognize the 1987 amendments in its use throughout the regulation. The terms "Application" and "Evaluation" would include references to subpart E for the Yucca Mountain site in addition to references to subparts C and D. The definition of "Closure" would include ramps to acknowledge the use of inclined ramps at Yucca Mountain in addition to vertical shafts. The term "Determination" would now apply to subparts C and D for purposes of decisions of suitability for site characterization, and to subpart E for purposes of decisions of suitability for repository development.

2. Implementation Guidelines (subpart B)

Section 960.3 Siting provisions

The implementation guidelines in subpart B establish the procedure and basis for applying the postclosure and preclosure guidelines of subparts C and D to the siting process when site recommendation for characterization is to be made from multiple candidate sites. In general, references to subpart E would be added to the implementation guidelines in subpart B wherever subpart C and D are mentioned to ensure consistency and clarity in the distinctions between the two sets of postclosure and preclosure guidelines. Subpart B would be revised only to the extent necessary to accommodate the insertion of subpart E into the regulation.

The first sentence of section 960.3 would be replaced by two sentences. The first would state that the guidelines of subpart B establish the procedure and basis for applying the guidelines in subparts C, D, and E. The new second sentence would explain that the guidelines of subparts C and D apply to comparative evaluations of multiple sites for suitability for characterization. The original second sentence would be revised to include the word comparative in reference to those parts of the siting process that require consideration of various settings and consultation with various affected units of government. A new final sentence would be added to explicitly state that the guidelines of subpart E apply to evaluations of the

suitability of the Yucca Mountain site for development as a repository.

Section 960.3-1 would be revised by replacing a phrase in the final sentence to clarify that § 960.3-1-5, Basis for Site Evaluations, establishes the basis for applying subparts C, D and E. Section 960.3-1-1 to § 960.3-1-4-4 requires the consideration of various site settings and types in precharacterization screening and describe the types of evidence needed at each step in the sequence of siting decisions. No changes are proposed to these sections because they are already consistent with the proposed amendments to the existing regulation and the proposed addition of subpart E.

Section 960.3-1-5 provides the basis for evaluations of individual sites and comparisons between and among sites. This section provides that the guidelines of subparts C and D apply to the screening and selection of sites through the recommendation of candidate sites for characterization. Because the NWSA now requires that only the Yucca Mountain site be characterized and evaluated for suitability for development as a repository, the proposed amendment would refer to subpart E as the basis for this evaluation. This section would be divided into three subsections to make the following two distinctions. First, it would distinguish between evaluations of sites leading to recommendations for characterization and the evaluation of the Yucca Mountain site for development as a repository. Second, it would distinguish the basis for evaluating individual sites from the basis for comparing multiple sites.

The subsection heading "(a) General Provisions" is inserted at the beginning of the section. This newly designated subsection would consist of the first two sentences of § 960.3-1-5 with the following revisions. A proposed addition to the first sentence would specify that the evaluation of the suitability of the Yucca Mountain site for development as a repository would be based on the guidelines in subpart E. The second sentence, assigning primary significance to the postclosure guidelines, except during the screening of potentially acceptable sites (the first of the four decisions in the siting process sequence set forth in § 960.3-1-4), would exempt subpart E from this ranking of the guidelines. The guidelines were ranked to reflect the fundamental purpose of a repository to provide long-term isolation of radioactive waste and to facilitate comparisons of sites where some site attributes under the Guidelines may be similar. The ranking would not apply to

subpart E because it would serve no comparative purpose. To clarify this distinction between evaluating individual sites and ranking the guidelines for comparisons of multiple sites, the word "comparisons" would replace "evaluations" in the second sentence of subsection (a).

The subsection heading "(b) Site Evaluations," would be inserted before the third sentence in § 960.3-1-5 to create a new subsection containing the third through tenth sentences of this section revised as follows. This subsection would separate the process and basis for evaluating individual sites from the process for comparing multiple sites under the proposed subsection (c). The description of the arrangement of the Guidelines would now refer directly to subparts C and D where the system guidelines have corresponding technical guidelines. A sentence would be added for clarity, after the eighth sentence, stating that subpart E does not contain corresponding technical guidelines. This sentence is added because the proposed subpart E use of system guidelines would consider the full range of relevant site conditions embodied in any technical guidelines. The proposed system guideline approach of subpart E would not eliminate or disguise consideration of any specific characteristic of the Yucca Mountain site that may affect repository performance. Indeed, the relevant technical factors in subparts C and D would still be considered; but, rather than each being evaluated against a specific independent technical guideline, the factors would be considered for their role in the system's performance. The ninth (now tenth) sentence of this subsection would be revised to explain that subpart E would be used to evaluate the Yucca Mountain site. The final sentence would be revised to explain that disqualification of a site depends on findings made regarding the "applicable" qualifying or disqualifying conditions. For the characterization work at Yucca Mountain, the "applicable" conditions would be the qualifying conditions in § 960.6.

The subsection heading "(c) Site Comparisons," would be inserted before the eleventh sentence of § 960.3-1-5. The subsection would consist of the remainder of this section revised as follows. The first sentence would now include a specific reference to subparts C and D to avoid confusion with subpart E. The portion of the sentence referencing § 960.3-2-4, "performed to support the recommendation of sites for the development of repositories in § 960.3-2-4," would be deleted. This

deletion would recognize that § 960.3-2.1 "Recommendation of sites for the development of repositories," would be revised to no longer include comparisons of characterized sites. The next sentence, defining the accessible environment, would be deleted because that term is already defined in § 960.2. The repetition of the definition is unnecessary and potentially confusing.

Section 960.3-2 addresses the four steps in the comparative siting process in §§ 960.3-2-1 through 960.3-2-4. Sections 960.3-2-1 through 960.3-2-3 address the three steps in the process that were completed before the 1987 amendments designated Yucca Mountain as the sole site to be characterized. Although these steps were successfully completed with regard to the Yucca Mountain site, they are still found in section 112 of the NWPA, and could possibly be used to evaluate another or other sites in the future. Therefore, no changes are proposed to these sections.

Section 960.3-2-4, "Recommendation of sites for the development of repositories," establishes the process for the fourth and final step in the siting process. This section refers to multiple characterized candidate sites for the development of the first repository, or subsequent repositories. It would now recognize Yucca Mountain as the sole candidate site that may be recommended under section 114 of the NWPA. The title would be revised to "Recommendation of a site for the development of a repository." The first sentence would now explain that the Yucca Mountain site shall be evaluated on the basis of the guidelines in subpart E. Because section 114 of the NWPA now provides only for the recommendation of the Yucca Mountain site if it is found suitable for development as a repository, the final sentence would refer specifically to the Yucca Mountain site and all references to other candidate sites would be deleted. If the Yucca Mountain site is found unsuitable, NWPA subsection 113(c)(3)(F) requires the Secretary to report to Congress recommendations for further action to assure the safe, permanent disposal of spent nuclear fuel and high-level radioactive waste, including the need for new legislative authority.

3. Yucca Mountain Site Guidelines (subpart E)

Section 960.6 Yucca Mountain Site Guidelines

The postclosure and preclosure system guidelines of subpart E would

each contain a single qualifying condition that the geologic repository at Yucca Mountain must meet in order for the site to be found suitable for development as a repository. The qualifying condition in both cases would provide that the geologic repository shall be capable of limiting radioactive releases as required by the site-specific standards to be promulgated by the EPA pursuant to the Energy Policy Act of 1992. The DOE would not reach a determination on the suitability of the Yucca Mountain site under these Guidelines in the absence of the final promulgation of those standards. Because the NRC must conform its regulations to the EPA standards, these guidelines also refer to the NRC regulations implementing those standards.

Section 960.6 would provide that a decision to recommend the site as suitable for development as a repository under the Guidelines must include compliance with both postclosure and preclosure system guidelines. The DOE would evaluate compliance with these guidelines by conducting performance assessments and then comparing the results of those assessments to the applicable standards and regulations.

In § 960.6-1, "Postclosure system guideline," the DOE would recognize that a geologic repository at Yucca Mountain shall be evaluated against the site-specific EPA standards and the NRC regulations implementing them. The key differences between the postclosure guidelines under subpart C and this section would be that this section would not include technical guidelines and would require using the site-specific EPA standards being promulgated pursuant to section 801 of the Energy Policy Act of 1992 and the NRC regulations implementing those standards. Compliance with the postclosure system guideline in this section would be determined through a performance assessment that evaluates the ability of the repository system to allow for the containment and isolation of radioactive waste after permanent closure.

Section 960.6-2, "Preclosure radiological safety system guideline," would provide for compliance with the EPA site-specific standards and the NRC radiation protection standards applicable during construction, operation and closure of the repository. The preclosure radiological safety system guideline in subpart D calls for compliance with 10 CFR parts 20 and 60, and 40 CFR part 191. This preclosure guideline would recognize

that the EPA site-specific standards, rather than 40 CFR part 191, apply to Yucca Mountain. It would also recognize the application of the requirements of 10 CFR part 20, "Standards for Protection Against Radiation," which generally apply to licensed, operational nuclear facilities throughout the United States, and 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories," or successor provisions. Thus, the main difference between the subpart D preclosure radiological safety system guideline and the preclosure evaluation conducted under this section is that this section would apply the Yucca Mountain site-specific EPA standards being developed pursuant to the Energy Policy Act of 1992.

4. Appendix III

Appendix III—Application of the System and Technical Guidelines During the Siting Process

The introductory text in this appendix would be amended by adding a single sentence to clearly establish that this appendix does not apply to the guidelines of Subpart E for the evaluation of the Yucca Mountain site for its suitability for development as a repository. The distinctions between lower-level and higher-level findings have been preserved for their use in the comparative siting process.

III. References

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IV. Opportunity for Public Comment

A. Participation in Rulemaking

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, or comments with respect to the subject set forth in this notice. The Department encourages the maximum level of public participation possible in this rulemaking. Individuals, coalitions, states or other government entities, and others are urged to submit written comments on the proposal. The Department also encourages interested persons to participate in the public hearing to be held at the time and place indicated at the beginning of this notice.

B. Written Comment Procedures

The DOE requests public comments only on the proposed amendatory language in this notice and will not consider comments on the current regulation in this rulemaking proceeding. Written comments (eight copies) should be identified on the outside of the envelope, and on the comments themselves, with the designation: "General Guidelines NPR, Docket Number RW-RM-96-100" and must be received by the date specified at the beginning of this notice in order to be considered. In the event any person wishing to submit a written comment cannot provide eight copies, alternative arrangements can be made in advance by calling (702) 794-5578. Additionally, the Department would appreciate an electronic copy of the written comments to the extent possible. The Department is currently using WordPerfect 6.1 for Windows. All comments received on or before the date specified at the beginning of this notice and other relevant information will be considered by the DOE before final action is taken on the proposed rule. All comments submitted will be available for examination in the Rule Docket File in the Yucca Mountain Science Center in Las Vegas, Nevada, and the DOE's Freedom of Information Reading Room. In addition, a transcript of the proceedings of the public hearing will be filed in the docket. The transcript and additional material will be available by electronic mail at the following URL address: <http://www.ymp.gov>. Pursuant to the provisions of 10 CFR 1004.11 any person submitting information or data that is believed to be confidential, and which may be exempt by law from public disclosure, should submit one complete copy, as well as two copies from which the information claimed to be confidential has been deleted. The Department of Energy will make its own

determination of any such claim and treat it according to its determination.

C. Public Hearing Procedures

The time and place of the public hearing are indicated at the beginning of this notice. The Department invites any person who has an interest in the proposed regulation or who is a representative of a group or class of persons which has an interest to make a request for an opportunity to make an oral presentation at the hearing. Requests to speak should be sent to the address or phone number indicated in the ADDRESSES section of this notice and be received by the time specified in the DATES section of this notice. The person making the request should briefly describe his or her interest in the proceedings and, if appropriate, state why that person is a proper representative of the group or class of persons that has such an interest. The person also should provide a phone number where they may be reached during the day. Each person selected to speak at a public hearing will be notified as to the approximate time that they will be speaking. They should bring eight copies of their oral statement to the hearing. In the event any person wishing to testify cannot meet this requirement, alternative arrangements can be made in advance by calling (702) 794-1322. The length of each presentation will be limited to five minutes, or based on the number of persons requesting to speak. Persons planning to speak should address their comments to the proposed amendatory language contained in this notice. The DOE will not consider testimony on the language in the current regulation in this rulemaking proceeding. A Department official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and section 501 of the Department of Energy Organization Act, 42 U.S.C. 7191. At the conclusion of all initial oral statements, each person will be given the opportunity to make a rebuttal or clarifying statement. These statements will be given in the order in which the initial statements were made. Any further procedural rules needed for the proper conduct of the hearing will be announced by the Presiding Officer at the hearing. If the DOE must cancel the hearing, the DOE will make every effort to publish an advance notice of such cancellation in the Federal Register. Notice of cancellation will also be given to all persons scheduled to speak at the hearing. Hearing dates may be canceled

in the event no public testimony has been scheduled in advance.

V. Compliance With the National Environmental Policy Act (NEPA)

The issuance of these amendments to the Guidelines is a preliminary decision making activity pursuant to section 112(d) and 113(d) of the NWPA and therefore does not require the preparation of an environmental impact statement pursuant to section 102(2)(C) of the NEPA or any other environmental review under section 102(2) (E) or (F) of the NEPA.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, was enacted by Congress to ensure that small entities do not face significant negative economic impact as a result of Government regulations. The DOE certifies that the rule amending the Guidelines will not have a significant impact on a substantial number of small entities. The rule will not regulate anyone outside of the DOE. It merely articulates proposed considerations for the Secretary of Energy to undertake in determining whether the Yucca Mountain site is suitable to be recommended for development as a repository. Accordingly, no regulatory flexibility analysis is required under the Regulatory Flexibility Act.

VII. Review Under the Paperwork Reduction Act

The DOE has determined that this proposed rule contains no new or amended recordkeeping, reporting, or application requirements, or any other type of information collection requirements subject to the Paperwork Reduction Act (Pub. L. 96-511).

VIII. Review Under Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) generally requires Federal agencies to closely examine the impacts of regulatory actions on State, local, and tribal governments. Section 101(5) of Title I of that law defines a Federal intergovernmental mandate to include any regulation that would impose an enforceable duty upon State, local, or tribal governments, except, among other things, a condition of Federal assistance or a duty arising from participating in a voluntary federal program. Title II of that law requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments, in the aggregate, or to the private sector, other than to the extent

such actions merely incorporate requirements specifically set forth in a statute. Section 202 of that title requires a Federal agency to perform a detailed assessment of the anticipated costs and benefits of any rule that includes a Federal mandate which may result in costs to State, local, or tribal governments, or to the private sector, of \$100 million or more. Section 204 of that title requires each agency that proposes a rule containing a significant Federal intergovernmental mandate to develop an effective process for obtaining meaningful and timely input from elected officers of State, local, and tribal governments.

This proposed rule is not likely to result in the promulgation of any final rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of \$100 million or more in any one year. Further, the Guidelines in 10 CFR part 960 and the proposed amendments to part 960 in this rule largely incorporate requirements specifically provided in sections 112 and 113 of the NWPA. Moreover, sections 112, 113 and 114 of the NWPA provide for meaningful and timely input from elected officials of State, local and tribal governments. Accordingly, no assessment or analysis is required under the Unfunded Mandates Reform Act of 1995.

IX. Review Under Executive Order 12612

Executive Order 12612, 52 FR 41685, requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effect on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial effects, then the Executive Order requires a preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing policy action. The rule proposed in this notice will not have a substantial direct effect on the institutional interests or traditional functions of the States. Accordingly, no assessment or analysis is required under Executive Order 12612.

X. Review Under Executive Order 12866

Section 1 of Executive Order 12866 ("Regulatory Planning and Review"), 58 FR 51735, establishes a philosophy and principles for Federal agencies to follow in promulgating regulations. Section 1(b)(9) of that Order provides:

"Wherever feasible, agencies shall seek views of appropriate State, local, and tribal officials before imposing regulatory requirements that might significantly or uniquely affect those governmental entities. Each agency shall assess the effects of Federal regulations on State, local, and tribal governments, including specifically the availability of resources to carry out those mandates, and seek to minimize those burdens that uniquely or significantly affect such governmental entities, consistent with achieving regulatory objectives. In addition, agencies shall seek to harmonize Federal regulatory actions with regulated State, local and tribal regulatory and other governmental functions."

Section 6 of Executive Order 12866 provides for a review by the Office of Information and Regulatory Affairs (OIRA) of a "significant regulatory action," which is defined to include an action that may have an effect on the economy of \$100 million or more, or adversely affect, in a material way, the economy, competition, jobs, productivity, the environment, public health or safety, or State, local, or tribal governments. The Department has concluded that this rule is not a significant regulatory action that requires a review by the OIRA.

XI. Review Under Executive Order 12875

Executive Order 12875 ("Enhancing Intergovernmental Partnership"), provides for reduction or mitigation, to the extent allowed by law, of the burden on State, local and tribal governments of unfunded Federal mandates not required by statute. The analysis under the Unfunded Mandates Reform Act of 1995, above, satisfies the requirements of Executive Order 12875. Accordingly, no further analysis is required under Executive Order 12875.

XII. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive

agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

List of Subjects in 10 CFR Part 960

Environmental protection, Geologic repositories, Nuclear energy, Nuclear materials, Radiation protection, Waste disposal.

Issued in Washington, DC, on December 9, 1996.

Daniel A. Dreyfus,
Director, Office of Civilian Radioactive Waste Management.

For the reasons set out in the preamble, part 960 of title 10 of the Code of Federal Regulations is proposed to be amended as follows.

PART 960—GENERAL GUIDELINES FOR THE RECOMMENDATION OF SITES FOR NUCLEAR WASTE REPOSITORIES

1. The authority citation for 10 CFR part 960 is revised to read as follows:

Authority: 42 U.S.C. 2011 *et seq.*, 42 U.S.C. 5801 *et seq.*, 42 U.S.C. 7101 *et seq.*, 42 U.S.C. 10101 *et seq.*

Subpart A—General Provisions

2. Section 960.1 is revised to read as follows:

§960.1 Applicability.

These guidelines were developed in accordance with the requirements of sections 112(a) and 113(b)(1)(A)(iv) of the Nuclear Waste Policy Act of 1982, as amended, for use by the Secretary of Energy in evaluating the suitability of sites for the development of repositories. Subpart B of this part explains the procedure and basis for applying the guidelines in subparts C, D and E of this part. The guidelines in subparts C and D of this part will be

used for comparative suitability evaluations and determinations made pursuant to section 112(b). Only subpart E of this part will be used for evaluating the suitability of the Yucca Mountain site pursuant to section 113(b)(1)(A)(iv). In the event of an inconsistency between the guidelines and the applicable NRC regulations, the NRC regulations would apply. The DOE contemplates revising the guidelines from time to time, as permitted by the Act, to take into account revisions made to the NRC regulations and to otherwise update the guidelines as necessary. The DOE will submit the revisions to the NRC and obtain its concurrence before issuance.

3. Section 960.2 is amended by revising the definitions of "Act," "Application," "Closure," "Determination," and "Evaluation," as follows:

§960.2 Definitions.

* * * * *
Act means the Nuclear Waste Policy Act of 1982, as amended.
* * * * *

Application means the act of making a finding of compliance or noncompliance with the qualifying or disqualifying conditions specified in the guidelines of subparts C and D of this part, in accordance with the types of findings specified in appendix III to this part, or with the qualifying conditions specified in the guidelines of subpart E of this part.
* * * * *

Closure means the final closing of the remaining open operational areas of the underground facility and boreholes after termination of waste emplacement, culminating in the sealing of shafts and ramps.
* * * * *

Determination means a decision by the Secretary that a site is suitable for characterization consistent with the guidelines of subparts C and D of this part or that the Yucca Mountain site is suitable for development as a repository consistent with subpart E of this part.
* * * * *

Evaluation means the act of carefully examining the characteristics of a site in relation to the requirements of the qualifying or disqualifying conditions specified in the guidelines of subpart C and D or subpart E of this part.

4. Section 960.3 is revised to read as follows:

§960.3 Implementation guidelines.

The guidelines of this subpart establish the procedure and basis for applying the guidelines in subparts C, D

and E of this part. The postclosure and the preclosure guidelines of subparts C and D of this part, respectively, apply to comparative evaluations of the suitability of multiple sites for characterization. As may be appropriate during the comparative siting process, this procedure requires consideration of a variety of geohydrologic settings and rock types, regionality, and environmental impacts and consultation with affected States, affected Indian tribes, and Federal agencies. The postclosure and preclosure guidelines of subpart E of this part apply to evaluations of the suitability of the Yucca Mountain site for development as a repository.

5. Section 960.3-1 is amended by revising the final sentence of the section to read as follows:

§ 960.3-1 Siting provisions.

* * * Section 960.3-1-5 establishes the basis for site evaluations against the postclosure and the preclosure guidelines of subparts C, D and E of this part.

6. Section 960.3-1-5 is revised to read as follows:

§ 960.3-1-5 Basis for site evaluations.

(a) *General provisions.* Evaluations of individual sites and comparisons between and among sites shall be based on the postclosure and preclosure guidelines specified in subparts C and D of this part, respectively, except that the evaluation of the suitability of the Yucca Mountain site for development as a repository shall be based on the guidelines in subpart E of this part. Except for screening for potentially acceptable sites as specified in § 960.3-2-1 and in the implementation of subpart E of this part, such comparisons shall place primary significance on the postclosure guidelines and secondary significance on the preclosure guidelines, with each set of guidelines considered collectively for such purposes.

(b) *Site evaluations.* Both the postclosure and the preclosure guidelines of subparts C and D of this part consist of a system guideline or guidelines and corresponding groups of technical guidelines. The postclosure guidelines of subpart C of this part contain eight technical guidelines in one group. The preclosure guidelines of subpart D of this part contain eleven technical guidelines separated into three groups that represent, in decreasing order of importance, preclosure radiological safety; environment, socioeconomics, and transportation; and ease and cost of siting, construction, operation, and closure. The relative

significance of any technical guideline to its corresponding system guideline is site specific. Therefore, for each technical guideline, an evaluation of compliance with the qualifying condition shall be made in the context of the collection of system elements and the evidence related to that guideline, considering on balance the favorable conditions and the potentially adverse conditions identified at a site. Similarly, for each system guideline, such evaluation shall be made in the context of the group of technical guidelines and the evidence related to that system guideline. The guidelines of subpart E of this part contain two system performance guidelines without corresponding technical guidelines. For purposes of recommending the Yucca Mountain site for development as a repository, such evidence shall include analyses of expected repository performance to determine the ability of the site to comply with the standards set forth in subpart E of this part. A site shall be disqualified at any time during the siting process if the evidence supports a finding by the DOE that an applicable disqualifying condition exists or an applicable qualifying condition cannot be met.

(c) *Site comparisons.* Comparisons between and among sites shall be based on the system guidelines in subparts C and D of this part, to the extent practicable and in accordance with the levels of relative significance specified above for the postclosure and the preclosure guidelines. Such comparisons are intended to allow comparative evaluations of sites in terms of the capabilities of the natural barriers for waste isolation and to identify innate deficiencies that could jeopardize compliance with such requirements. If the evidence for the sites is not adequate to substantiate such comparisons, then the comparisons shall be based on the groups of technical guidelines under the postclosure and the preclosure guidelines, considering the levels of relative significance appropriate to the postclosure and the preclosure guidelines and the order of importance appropriate to the subordinate groups within the preclosure guidelines. Comparative site evaluations shall place primary importance on the natural barriers of the site. In such evaluations for the postclosure guidelines of subpart C of this part, engineered barriers shall be considered only to the extent necessary to obtain realistic source terms for comparative site evaluations based on the sensitivity of the natural barriers to such realistic engineered barriers. For a

better understanding of the potential effects of engineered barriers on the overall performance of the repository system, these comparative evaluations shall consider a range of levels in the performance of the engineered barriers. That range of performance levels shall vary by at least a factor of 10 above and below the engineered-barrier performance requirements set forth in 10 CFR 60.113, and the range considered shall be identical for all sites compared. The comparisons shall assume equivalent engineered-barrier performance for all sites compared and shall be structured so that engineered barriers are not relied upon to compensate for deficiencies in the geologic media. Furthermore, engineered barriers shall not be used to compensate for an inadequate site; mask the innate deficiencies of a site; disguise the strengths and weaknesses of a site and the overall system; and mask differences between sites when they are compared. Site comparisons shall evaluate predicted releases of radionuclides to the accessible environment. Releases of different radionuclides shall be combined by the methods specified in appendix A of 40 CFR part 191. The comparisons specified above shall consist of two comparative evaluations that predict radionuclide releases for 100,000 years after repository closure and shall be conducted as follows. First, the sites shall be compared by means of evaluations that emphasize the performance of the natural barriers at the site. Second, the sites shall be compared by means of evaluations that emphasize the performance of the total repository system. These second evaluations shall consider the expected performance of the repository system; be based on the expected performance of waste packages and waste forms, in compliance with the requirements of 10 CFR 60.113, and on the expected hydrologic and geochemical conditions at each site; and take credit for the expected performance of all other engineered components of the repository system. The comparison of isolation capability shall be one of the significant considerations in the recommendation of sites for the development of repositories. The first of the two comparative evaluations specified above shall take precedence unless the second comparative evaluation would lead to substantially different recommendations. In the latter case, the two comparative evaluations shall receive comparable consideration. Sites with predicted isolation capabilities that differ by less than a

factor of 10, with similar uncertainties, may be assumed to provide equivalent isolation.

7. Section 960.3-2-4 is revised to read as follows:

§ 960.3-2-4 Recommendation of a site for the development of a repository.

After completion of site characterization and non-geologic data gathering activities at the Yucca Mountain site, the site shall be evaluated on the basis of the guidelines specified in subpart E of this part. Together with any recommendation to the President to approve the Yucca Mountain site for the development of a repository, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation pursuant to the requirements specified in section 114(a)(1) of the Act, including an environmental impact statement prepared in accordance with the provisions of sections 114(a)(1)(D) and 114(f) of the Act.

8. Subpart E is added to read as follows:

Subpart E—Yucca Mountain Site Guidelines
Sec.

960.6 Yucca Mountain site guidelines.

960.6-1 Postclosure system guideline.

960.6-2 Preclosure radiological safety system guideline.

Subpart E—Yucca Mountain Site Guidelines

§ 960.6 Yucca Mountain site guidelines.

The guidelines in this subpart specify the qualifying conditions that a geologic repository at Yucca Mountain shall meet for the site to be determined suitable for development as a repository. The guidelines are separated into postclosure and preclosure system guidelines. Compliance with the postclosure system guideline shall be determined by the ability of a geologic repository to meet the applicable standards through a postclosure system performance assessment. Compliance with the preclosure radiological safety system guideline shall be determined by the ability of a geologic repository to meet the applicable standards through a preclosure performance assessment.

§ 960.6-1 Postclosure system guideline.

Qualifying condition. The geologic repository shall allow for the

containment and isolation of radioactive waste after permanent closure in accordance with the EPA standards established specifically for the Yucca Mountain site and the NRC regulations implementing those standards.

§ 960.6-2 Preclosure radiological safety system guideline.

Qualifying condition. During construction, operation, and closure, the geologic repository shall perform in accordance with the EPA standards established specifically for the Yucca Mountain site and the applicable safety requirements set forth in 10 CFR parts 20 and 60 or their successor provisions.

9. Appendix III is amended in the introductory text of paragraph number 1 by adding a new sentence immediately after the first sentence of that paragraph to read as follows:

Appendix III—Application of the System and Technical Guidelines During the Siting Process

1. * * * This appendix does not apply to the guidelines of subpart E for the evaluation of the Yucca Mountain site for its suitability for development as a repository. * * *

[FR Doc. 96-31603 Filed 12-13-96; 8:45 am]
BILLING CODE 6450-01-P

66160, better suggests a Congressional admonition to comply with the technical factor approach mandated by section 10132(a), rather than to propose a subterfuge for avoiding it. My office will be forced to challenge the Department's interpretation.

Congress left section 10132(a) intact when it amended the Nuclear Waste Policy Act in 1987, as it did in the several opportunities it has had to amend it since then. Section 10132(a) provides the only authoritative direction to the department. It is entirely clear that the statute prevails and the Secretary should not rely on conflicting statements or erroneous departmental interpretations of less authoritative sources as a pretext to subvert the statute.

THE PROPOSED AMENDMENTS TO THE SITING GUIDELINES ARE BAD PUBLIC POLICY

The selection of a sound solution to the nation's nuclear waste problems is a process of managing potentially huge risks to the environment and public health. As with the protection of any investment against the risk of loss, the policy alternatives are consolidation of all venture assets into one risk opportunity or spreading venture assets into broad and alternative risk opportunities. We submit that spreading the risk is the better alternative, for it does not portend total failure. Unfortunately, Congress chose the poorer alternative when it consolidated all the Department's efforts at Yucca Mountain in 1987. If Yucca Mountain fails, the United States has no viable alternative for a geologic disposal site.

Once the bad policy choice has been made, however, it becomes imperative to learn the real deficiencies of the chosen single risk opportunity as soon as possible. Evaluation of Yucca Mountain under "specific] factors that qualify or disqualify any site from development as a repository" provides that early warning. The Department's objective should be to provide Congress and the public with the greatest possible information regarding the technical merits of

the Yucca Mountain site at the earliest opportunity. The guidelines claim in *Watkins I* was an effort by Nevada to persuade the DOE to recognize this basic proposition. Unfortunately, the Department did not get the message.

A "performance assessment" which overlooks Yucca Mountain's technical competence and determines merely that the site "allows for" containment and isolation of radioactive waste does not provide an early warning of the deficiencies of the site. Rather, it permits the Department to hide Yucca Mountain's technical deficiencies and shortcomings in an abyss of subjective opinion. Deficiencies involving unreasonable environmental and public health risks will cause severe investment loss when it becomes necessary to confront them. The question is not if, but when.

The Ninth Circuit's decision in *Watkins I* and *Watkins II* that assessment of the risk of environmental and public health injury against predetermined technical factors was not required until the Secretary makes a site recommendation and could not be reviewed before then, although technically correct, was bad public policy because it has permitted postponement of the decision to terminate site characterization at Yucca Mountain pursuant to 10134(f) when such termination is warranted by known deficiencies in the site. The abdication of a credible technical assessment through the substitution of a subjective performance assessment for true evaluation against objective technical factors is an even worse public policy decision because it carries with it the pronounced risk that an unsuitable site will be selected for development as a repository. My office will ask the Ninth Circuit Court of Appeals to intervene, if necessary, to see that this does not happen.

The DOE should find little comfort in the Court's decisions in the *Watkins* cases because the Court did recognize that it would review a circumstance in which the Department failed to promulgate any guidelines. The proposal put forth in the December 16, 1996, Federal Register notice is tantamount to a such a failure.

CONCLUSION

The Department of Energy should not amend 10 CFR 960 in the manner proposed in 61 Fed. Reg. 66158. Performance assessments are not a wise or legal substitute for solid evaluation of Yucca Mountain's physical characteristics against preestablished geophysical and institutional prerequisites. The public interest in the health and well being of our Nation's citizens demand that the Department of Energy comply with established federal law.



STATE OF NEVADA
EXECUTIVE CHAMBER

Capitol Complex
Carson City, Nevada 89710

BOB MILLER
Governor

TELEPHONE
(702) 687-5670
Fax: (702) 687-4486

December 24, 1996

The Honorable Hazel O'Leary
The Department of Energy
Intergovernmental Affairs Office
CI-30, Room #7B164
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Secretary O'Leary:

On Monday, December 16th, the Office of Civilian Radioactive Waste Management (OCRWM) of the Department of Energy published, for public comment, a proposed rule revising 10 CFR 960, General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories. I am writing to express my very strong objection to this action on the following grounds.

First, the proposed rule does not comply with the clear direction in Section 112(a) of the Nuclear Waste Policy Act, as amended, which requires specific factors that qualify or disqualify any site from development as a repository. It further sets out a number of technical factors which must be addressed by these qualifying and disqualifying conditions, including geology, hydrology, the location of valuable natural resources, nearby atomic energy defense activities, proximity to water supplies and effect on the rights of water users, transportation and safety factors involved in moving the waste to a repository, etc. The proposed rule violates the statute as it does not address these factors and the requisite qualifying and disqualifying conditions.

Second, the Guideline revision substitutes, for these specific factors, a more general system analysis approach, OCRWM is proposing that, if the overall performance at Yucca Mountain can be shown to meet the yet-to-be promulgated Environmental Protection Agency radiation standards, then the site should be recommended for development as a repository. Not only does this approach violate the clear direction in the statute, but it ignores the same technical

The Honorable Hazel O'Leary
December 24, 1996
Page 2

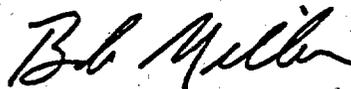
factors described above that are not capable of being evaluated in a total systems performance assessment.

One can only assume that the Department of Energy officials believe that Yucca Mountain would be disqualified as a repository under the existing Section 112(a) guidelines. This approach appears to continue a very tradition of this program: If Yucca Mountain can't meet the safety rules--then change the rules.

Madam Secretary, this approach is totally unacceptable, and the proposed rule should be withdrawn. This is simply too important an issue to substitute a new, subjective approach to determining the suitability of Yucca Mountain, one that is of DOE's own making, for the clear, objective approach that Congress prescribed in adopting section 112(a) of the Nuclear Waste Policy Act of 1982, as amended.

The proposed approach, if adopted, will result in legal challenge by the State of Nevada and further erode the credibility of an already controversial program. This attempt to rewrite the law to eliminate the need to consider and evaluate important factors which, if present as they appear to be, would compromise the safety of the site and of the citizens of this state far into the future, something that I, as Governor, will not allow to happen.

Sincerely,



BOB MILLER
Governor

BL/RU/jla



SIERRA CLUB - Toiyabe Chapter

Southern Nevada Group
P.O. Box 19777, Las Vegas,, Nevada 89132

received
#8 1-27-97

January 14, 1997

Ms. April V. Gil
U.S. Department of Energy
Yucca Mtn. Site Characterization
Office, M/S 523
P.O. Box 98608
Las Vegas, NV 89193-8608

Dear Ms. Gil,

On behalf of the Sierra Club, Toiyabe Chapter, Southern Nevada Group, Conservation Committee, I am writing to place on record the following comments on the DOE proposal to amend the siting guidelines for the proposed Yucca Mountain nuclear waste repository.

Current rules require EACH important category of the siting process to meet a predetermined scientific safety qualification for that category. Failure of any single major category to meet such a minimum level of safety would disqualify the entire site for selection as the nuclear waste repository.

The intent of the proposed rule change is to AVERAGE the pros and cons of these categories to determine "system performance approach". This assumes that a scientifically proven safety hazard in one category can be offset by an equally strong, but different, proven safety factor in another category.

"This approach would include consideration of technical factors in an integrated manner within the system postclosure and preclosure qualifying conditions. Discrete, independent findings on technical factors would not be required."

Federal Register, Vol. 61, No. 242, pg. 66160, 12/16/1996

The proposed new rules advocate the illogical, scientifically incorrect procedure to attempt the averaging of dissimilar qualities and quantities. This is junk science and, as such, is a deceitful proposal to imply safety without proving safety.

The Sierra Club, Toiyabe Chapter, Southern Nevada Group objects to the proposed rule change for the aforementioned reason.

Sincerely,


Fred Dexter, Jr.
Conservation Committee Member



January 20, 1997

Received
19 1-29-97

GENERAL GUIDELINES NOPR, DOCKET NUMBER RW-RM-96-100

April V. Gil
U.S. Department of Energy
Office of Civilian Radioactive Waste Management
Yucca Mountain Site Characterization Office, M/S 523
P.O. Box 98608
Las Vegas, NV 89193-8608

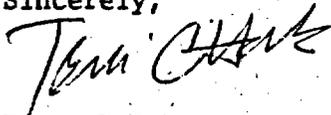
Re: Proposal to amend the siting guidelines

I am opposed to amending the siting guidelines to concentrate the regulatory review on the analyses of overall repository performance, and govern the evaluation of the Yucca Mountain site.

- 1) The guidelines are still applicable even though there is no need for comparative analysis between sites at this point in time.
- 2) The amendments you have suggested change the entire meaning of the guidelines and should not be accepted.
- 3) An analyses based on overall repository performance is not acceptable. This lowers the standards for licensing significantly.
- 4) A new subpart to govern the evaluation of Yucca Mountain is not necessary and it lowers the standards significantly.

I am opposed to amending the siting guidelines as proposed. The intent is that if the site is suitable it should become a repository, not to make the site suitable by changing the guidelines. This lowering of the standards for Yucca Mountain is not acceptable.

Sincerely,



Terri Hale
159 Ortiz Court
Las Vegas, Nevada 89110

PUBLIC COMMENT LOG - 10 CFR 960 RULEMAKING

No.	Date	Name & Address	Title & Organization	Notes
1	12/24/96	Bob Miller Capitol Complex Carson City, NV 89710	Governor, State of Nevada	
2	1/14/97	William C. Bianchi, PhD 4375 San Simeon Creek Road Cambria, CA 93428 Villa Bianchi@worldnet.att.net	Self	e-mail
3	1/14/97	Nancy Sanders HC60/Box CH210 Round Mountain, NV 89045	Self	
4	1/14/97	Margaret Quinn League of Women Voters PO Box 779 Carson City, NV 89702	President, League of Women Voters of Nevada	
5	1/20/97	Dr. Rosalie Bertell 103062.1200@compuserve.com	President, International Institute of Concern for Public Health	e-mail
6	1/21/97	Mary Olson Nuclear Information and Resource Service 1424 16th St. NW, Suite 404 Washington, DC 20036	Nuclear Information and Resource Service	
7	1/23/97	Frankie Sue Del Papa Capitol Complex Carson City, NV 89710	Attorney General, State of Nevada	

No.	Date	Name & Address	Title & Organization	Notes
8	1/27/97	Fred Dexter, Jr. Sierra Club - Toiyabe Chapter Southern Nevada Group PO Box 19777, Las Vegas, NV 89132	Conservation Committee Member Sierra Club - Toiyabe Chapter Southern Nevada Group	
9	1/29/97	Terri Hale 159 Ortiz Court Las Vegas, NV 89110	Self	
10	1/29/97	Barbara Hanson 159 Ortiz Court Las Vegas, NV 89110	Self	
11	2/3/97	Dr. Robert Bass Innoventech, Inc. PO Box 1238 Pahrump, NV 89041-1238	Self	Fax (5 pages total)
12	2/3/97	Mrs. Ruth Niswander 622 Barbara Place Davis, CA 95616-0409	Self	
13	2/4/97	Richard H. Bryan United States Senate 364 Russell Senate Office Bldg. Washington, DC 20010-2804	U.S. Senator from Nevada	
14	2/5/97	Marty Grey Women's International League for Peace and Freedom P.O. Box 18138 Cleveland, OH 89193-8608	Women Speak Out for Peace and Justice branch of Women's International League for Peace and Freedom	

January 18, 1997

received
#10 1-29-77

GENERAL GUIDELINES NOPR, DOCKET NUMBER RW-RM-96-100

April V. Gil
U.S. Department of Energy
Office of Civilian Radioactive Waste Management
Yucca Mountain Site Characterization Office, M/S 523
P.O. Box 98608
Las Vegas, NV 89193-8608

Re: Proposal to amend the siting guidelines

I am opposed to amending the siting guidelines to concentrate the regulatory review on the analyses of overall repository performance, and govern the evaluation of the Yucca Mountain site.

- 1) Your determination that the guidelines should be amended is erroneous. The guidelines are still applicable even though there is no need for comparative analysis between sites at this point in time.
- 2) The amendments you have suggested change the entire meaning of the guidelines and should not be accepted.
- 3) An analyses based on overall repository performance is not acceptable. This lowers the standards for licensing significantly.
- 4) A new subpart to govern the evaluation of Yucca Mountain is not necessary.

You mention that the general guidelines required by section 112 were developed in 1983 and 1984 when the DOE had only a general understanding of geologic disposal and a mandate to use the general guidelines to screen sites. In the 13 years since, your understanding of geologic disposal could not be that much advanced; however, your knowledge of the Yucca Mountain site is much more developed. There is still the mandate to use the general guidelines to screen this site. If the Yucca site fails, the guidelines would then be used to screen any other site selected for review.

If contributions of engineered barriers to the ability of a repository was minimized initially, it was for a reason. The site alone should be the determining factor as to whether a license is granted. Anyone who claims to be able to predict how safe this material will be within a repository for the next 10,000 years is not being rational. We have a long way to go before we reach this level of competence and knowledge. The evaluation of the relevant technical factors against the specific independent technical guideline gives a more reasonable assurance of safety than any evaluation of the overall system would give. These guidelines which require weighing each factor against the specific independent technical guidelines are site specific guidelines and apply to any site selected or which will be selected in the future. Safety is of primary concern here. Any changes to the guidelines which reduce safety is unacceptable, and the amendments reduce this safety substantially. If there is a potential problem, such as of water rising into the repository, this issue

should be considered of primary importance on its own and be made known in plain language to the people of Nevada as well as the licensing agency. If the site cannot pass because of the weighing of the relevant technical factors against the specific independent technical guidelines, then it should not be licensed. It should not be forced into a possible passing solution by a rewording of the guidelines. Congress intends that the DOE is to determine if Yucca Mountain is suitable, not to make Yucca Mountain suitable by changing the guidelines. The discrete, independent findings on the specific independent technical guidelines are of high importance in determining this suitability and must not be diluted as they would be in an overall system analysis. A systems analysis approach does not make a more meaningful method for determining suitability as you state, it just makes it easier to overlook flaws that were intended to be given careful consideration.

The whole system is based on unknown factors and events of the future. Any systems analysis approach would be very subjective and open to serious challenges. Considering each specific independent technical guideline is a much more precise manner to consider suitability, and it is important that this be retained.

Just because the comparisons between sites are out at this time does not give reason to change the approach to screening as well. Your assessment that the new Subpart E would provide a more meaningful indicator of the ability of a repository to protect the public is a flawed concept. It would provide a less meaningful indicator of the ability to protect the public. This is too major a change and should not be undertaken.

You give an example that water flowing quickly through the mountain may be benefited by repository design. There is nothing that man has constructed ever that will last anywhere near 10,000 years. In addition, potential natural disasters, such as earthquakes, could change things drastically. If this were the case, it may be necessary to disqualify this site and eventually find a site with a slow water flow. To change the guidelines to take into consideration the construction of a repository so that the quickly flowing water is given less weight should not be undertaken. If there is any potential for a problem, it should be taken seriously and be considered of utmost importance.

Too much emphasis is being placed by the DOE on the comparative analysis. Because one part of the guidelines is not currently applicable does not make the other parts of the guidelines inapplicable. It is not necessary to amend the guidelines. Just because Yucca Mountain was the only site selected does not mean that you should make the guidelines to fit the site rather than the site fitting the guidelines. There will be lawsuits if Yucca Mountain is found suitable for a repository, and these amendments will only weaken your hand.

You mention that the suites of technical guidelines considered characteristics that might be important to apply to any type of site in any geologic or hydrologic setting. If one of the guidelines is not applicable to an area, you don't throw them all out. You consider what is applicable to the area you are studying. If any of the guidelines fail in a particular area, the area should not be considered further as a potential site. The guidelines should not be

changed because a predetermined qualification cannot be met or may not be met. Anyone can make guidelines to fit a site; however, this is not what was intended. The geological aspects are important and should not be minimized because you are not comparing sites at this time.

There is no reason to add subpart E, Yucca Mountain site requirements. If a requirement such as this were intended from the beginning, it should have been included at the beginning. The way it is worded it could apply to any other potential site which could be selected if the words "Yucca Mountain" were changed. Subpart E should not be accepted no matter how it is worded as it was not the original intent.

The following are some comments on specific sections up for amendment:

Section 960.1 - The proposed amendments are very limiting. Although the guidelines in subparts C and D would be used for comparative analysis (which is at this time not applicable), only subpart E would be used to evaluate Yucca Mountain. Subpart E is very limiting. The amendment should not recognize that the EPA standards promulgated under 40 CFR part 191 not longer apply to Yucca Mountain. The words that the guidelines are intended to complement the requirements set forth in the Act, 10 CFR part 60, and 40 CFR part 191, should not be deleted. The standards for evaluating a site should not be lowered and this section should not be amended.

Section 960.2 - The definition under "Application" again is limiting to Yucca Mountain with the use of "or" in the sentence that the act of making a finding with the qualifying or disqualifying conditions specified in subparts C and D, or with the qualifying conditions specified in subpart E. The word "and" would be more applicable. You are making newer less stringent rules and saying the lesser stringent rules apply to Yucca Mountain.

The definition under "Determination" is again limiting by the use of "or" in the sentence that a decision that a site is suitable for characterization consistent with subparts C and D or Yucca Mountain is suitable for development as a repository under subpart E. In addition, subpart E should not be the sole decision for suitability for development as a repository. Section 960.2 should not be amended.

Section 960.3 - This is again a limiting section for Yucca Mountain. It was intended that none of the sites should be able to qualify for licensing if they are not safe according to the standards which were set. Because the amendments reduce the safety standards for Yucca Mountain and change the intent, this section should not be amended.

Section 960.3-1 - This section should not be amended.

Section 960.3-1-5 - Again we have a limiting section for Yucca Mountain with words such as "except" as in the sentence that evaluations of individual sites and comparisons shall be based on guidelines in subparts C and D, except evaluation of Yucca Mountain for development as a repository is to be based on the limiting guidelines in subpart E. The guidelines of subpart E of this part should contain the technical guidelines. For recommending Yucca Mountain for

development as a repository should not be determined on the expected repository performance, which is subjective. You mention that the proposed system guideline approach of subpart E would not eliminate or disguise consideration of any specific characteristic of Yucca Mountain; however, this is a false statement. In addition, the relevant technical factors in subparts C and D would no longer be evaluated against a specific independent technical guideline as intended. You mention that the relevant technical factors in subparts C and D would still be considered; however, subparts C and D as amended are to be used for comparative suitability determinations to determine which sites are characterized. Yucca Mountain is already past that point as it is already being characterized. These relevant technical factors in subparts C and D need to be evaluated against the specific independent technical guideline. This section should not be amended.

Section 960.3-2-4 - This section should not be amended.

Subpart E - This section should not be added.

Sections 960.6, 960.6-1, and 960.6-2 - This section requires only a single qualifying condition at Yucca Mountain for it to be found suitable as a repository. This condition is that the repository is to be able to limit radioactive releases as required by site-specific standards to be promulgated by the EPA. Again we have a severely limiting section which applies to Yucca Mountain only. This section would not include technical guidelines. A performance assessment of the ability of the repository to contain and isolate radioactive waste after permanent closure would be very subjective, especially without the evaluation against the specific independent technical guidelines. These sections should not be added.

The intent is being changed substantially in this amended guideline with the severely limiting sections which are added and changed. This is not a minor change to make this more understandable to the public as you claim. What is needed is a reliable method for determining the suitability of a site to contain this waste for 10,000 years. These amendments give a much less reliable method for determining this and, in fact, make the method for determining site suitability very subjective.

Although you would like to be able to lower the standards, get Yucca Mountain licensed, and get this problem off your back, the only real answer to this is to provide all the necessary checks to determine that this facility will be safe for the next 10,000 years, and if there is any chance that this cannot be done, there is only one solution possible, and that is not to build the facility. Making it easier to get licensed by changing the rules and not being concerned about the future should not be the stance taken. The above amendments are all very self-serving and helpful to the DOE; however, reducing the safety requirements is not an option.

This entire process of characterizing Yucca Mountain is only monetarily and politically motivated. The utility industry is only out to make a profit for their shareholders. The safety of the American people is of primary importance. I can understand your concern as you feel you have a problem of attempting to find this waste site suitable (which was not the original

Page 5 of 5

intent); however, once any site is approved for licensing, the problem will only get worse. They will almost immediately have to look for another site elsewhere as the first site will be filled within 30 years. Nuclear energy will continue to proliferate, and your children and our children are going to have a very serious problem.

I am opposed to amending the siting guidelines as the rules should not be made up as you are playing the game and can see what will be needed to win. This is unfair, unethical, and stands a good chance of defeat by the Courts.

Sincerely,



Barbara Hanson
159 Ortiz Court
Las Vegas, NV 89110

Employment Security (Unemployment Insurance and Employment Services), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, Section 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Pub. L. 81-775, section 2, on September 8, 1950; 42 U.S.C. 503(a)(1) and 29 U.S.C. 49d(b).

Aid to Families with Dependent Children, Social Security Act (Title IV-A), as amended by the Social Security Act Amendments of 1939, section 401, on August 10, 1939; 42 U.S.C. 602(a)(5).

Aid to the Blind, Social Security Act (Title X), as amended by the Social Security Act Amendments of 1939, section 701, on August 10, 1939; 42 U.S.C. 1202(a)(5)(A).¹

Aid to the Permanently and Totally Disabled, Social Security Act (Title XIV), as amended by the Social Security Act Amendments of 1950, section 1402, on August 28, 1950; 42 U.S.C. 1352(a)(5)(A).¹

Aid to the Aged, Blind or Disabled, Social Security Act (Title XVI), as amended by the Public Welfare Amendments of 1962, section 1602, on July 25, 1962; 42 U.S.C. 1382(a)(5)(A).¹

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended by the Social Security Amendments of 1965, section 1902, on July 30, 1965; 42 U.S.C. 1396(a)(4)(A).

State and Community Programs on A&V (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Comprehensive Older Americans Act Amendments of 1976, section 307 on October 18, 1978; 42 U.S.C. 3027(a)(4).

Foster Care and Adoption Assistance, Social Security Act (Title IV-E) as amended by the Adoption Assistance and Child Welfare Act of 1980; 42 U.S.C. 671(a)(5).

Part II

The following programs have a regulatory requirement for the establishment and maintenance of personnel standards on a merit basis.

Program, Legislation, and Regulatory Reference

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; Occupational Safety and Health State Plans for the Development and Enforcement of State Standards; Department of Labor, 29 CFR 1902.3(h).

Occupational Safety and Health Statistics, Williams-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Robert T. Stafford Disaster Assistance and Emergency Relief Act (42 U.S.C. 5196b), as amended; 44 CFR 302.4.

[FR Doc. 97-2616 Filed 1-31-97; 8:45 am]

BILLING CODE 6325-01-P

DEPARTMENT OF ENERGY

Office of Civilian and Radioactive Waste Management

10 CFR Part 960

RIN 1901-1172

General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories

AGENCY: Office of Civilian Radioactive Waste Management, Energy.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: In response to requests from several interested persons, the Department of Energy has granted additional time to comment on proposed amendments to 10 CFR part 960 that were published at 61 FR 66157 December 16, 1996.

DATES: Comments should be received no later than March 17, 1997.

ADDRESSES: All written comments are to be submitted to April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 98608, or provided by electronic mail to 10 CFR960@notes.ymp.gov.

FOR FURTHER INFORMATION CONTACT: April V. Gil, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 98608, Las Vegas, Nevada 89193-8608, (800) 967-3477.

Issued in Washington, D.C. on this 28th day of January, 1997.

Lake H. Barrett,

Acting Director, U.S. Department of Energy, Office of Civilian Radioactive Waste Management.

[FR Doc. 97-2553 Filed 1-31-97; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96-NM-108-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL-600-2B19 (Regional Jet Series 100) series airplanes. That AD currently requires revisions to the Airplane Flight Manual (AFM) to advise the flight crew of the need to perform daily checks to verify proper operation of the elevator control system, and to restrict altitude and airspeed operations under certain conditions. That AD also requires removal of all elevator flutter dampers. That AD was prompted by reports that the installation of certain shear pins may jam or restrict movement of the elevator. The actions specified by that AD are intended to prevent such jamming or restricting movement of the elevator and the resultant adverse effect on the controllability of the airplane. This new proposed action would add inspections of certain airplanes to detect deformation or discrepancies of the flutter damper hinge fittings and lug of the horizontal stabilizer, the elevator hinge/damper fitting, and the shear pin lugs; and require replacement of discrepant parts with serviceable parts. This proposed action also would require installation of new elevator flutter dampers, and replacement of shear pins and shear links with new, improved pins and links.

DATES: Comments must be received by March 14, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 96-NM-108-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE-171, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 10 Fifth Street, Third Floor, Valley Stream, New York 11581;

WRITTEN STATEMENT OF FRANKIE SUE DEL PAPA
ATTORNEY GENERAL OF NEVADA
REGARDING THE DEPARTMENT OF ENERGY'S
PROPOSED AMENDMENTS TO 10 CFR 960
SUBMITTED AT HEARING
LAS VEGAS, NEVADA
JANUARY 23, 1997



INTRODUCTION

On December 16, 1996, the Department of Energy proposed to amend 10 CFR 960; General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories (Siting Guidelines), 61 Federal Register 66157 (December 16, 1996). The proposed amendments to the Siting Guidelines are inconsistent with the federal statute (Section 112(a) of the Nuclear Waste Policy Act, 42 U.S.C. 10132 (a)); inconsistent with the Ninth Circuit Court of Appeals reasoning in three cases: *Nevada v. Watkins*, 914 F.2d 1545, 1562 (9th Cir. 1990) (*Watkins I*); *Nevada v. Watkins*, 939 F.2d 710, 716 (9th Cir. 1991) (*Watkins II*); and *Nevada v. Watkins*, 943 F. 2d 1080 (9th Cir. 1991) (*Watkins III*); and bad public policy. The office of the Attorney General of the State of Nevada opposes the proposed amendments in their entirety. Nevada's Governor has also stated his opposition on behalf of the State of Nevada. See attached letter, Governor Robert Miller to Secretary Hazel O'Leary, dated December 24, 1996.

In 1982, Congress established a political compromise with the states in which the Department of Energy was then exploring the potential for deep geological sites for the placement of high-level nuclear waste repositories, a compromise now long since dashed by inconsistent administrative actions of the Department and the political power and self interest of the nuclear power industry. The compromise resulting in the enactment of the Nuclear Waste Policy Act of 1982, 42 U.S.C. §§. 10101 *et seq.*, required the Department to study sites in

various geologies ("site characterization," 42 U.S.C. 10133), measure what DOE scientists found against pre-established minimum physical conditions ("siting guidelines," 42 U.S.C. 10132(a)) and compare the waste containment competence of each site on the basis of the respective site's physical attributes.

In 1984, the Department of Energy began what was to become a pattern of compromises to the site characterization process envisioned by the Congress in 10133(b) by the enactment of siting guidelines which contained subjective evaluation criteria and subjective minimum conditions (49 Fed. Reg. 5670, December 6, 1984). Nearly every state which had a candidate site challenged the guidelines in court cases which were eventually consolidated in the Ninth Circuit Court of Appeals.

By 1987, the Department had so politicized the evaluation process, thereby offending politically powerful states, that a frustrated Congress abandoned site characterization at other potentially competent sites. Congress, however, left intact the requirement in 42 U.S.C. 10132(a) that the Department measure what it learned about Yucca Mountain against objective, preestablished minimum physical conditions.

Now the Department wants to make the comparative process even more subjective by removing the requirement that the physical attributes of Yucca Mountain be measured against the present guidelines. The Department's proposed new approach would establish nothing more than a subjective prediction that Yucca Mountain will work in terms of total system performance. This approach abandons the statute, further abandons the political compromise, and most importantly, abandons the policy expectation that minimum physical attributes will exist in any deep geological disposal site.

Nevada sought the Ninth Circuit Court's assistance in 1985 to direct the Department to enact objective siting guidelines. In 1991, the Ninth Circuit found the issue premature, determining that the issue must be addressed when the Department uses the guidelines, not when it drafts them. *Watkins II, supra*. In 1990, Nevada again sought the Court's assistance in requiring the DOE to institute a "methodology, some formalized system of data collection, evaluation and decision making, to determine *early and throughout* the [site characterization] process, whether or not *any* Disqualifying Conditions exist, and if so, for making the required decision to terminate work at the site *whenever* such a condition is found." *Watkins II, supra*, at 1561. The Court held that although "the guidelines developed by the Secretary pursuant to section 10132(a), are to be utilized to determine the suitability of Yucca Mountain for the location of the repository," (*Id.* at 1562), "[b]ecause the Secretary is not required to promulgate regulations governing the timing of a disqualification decision, judicial review of his decision not to do so is not available under section 10139(a)" (*Id.* at 1563), and "the timing of a disqualification decision is committed to the Secretary's discretion by law" (*Id.* at 1564).

Watkins I and *Watkins II*, at a minimum, stand for the proposition that the guidelines which were promulgated by the DOE in 1984 and upon which the Yucca Mountain site was selected for characterization were to be used to determine the suitability of the site, and at the time of a suitability determination the validity of the guidelines would be subject to review by the Ninth Circuit or District of Columbia Courts of Appeals. The DOE's present intention to substitute the proposed new guidelines for the guidelines which have governed the site characterization process for the past 12 years is an admission either that the guidelines will not satisfy such a review or that the site cannot satisfy the guidelines. In either case, the process

self destructs. It is improper for the DOE to obfuscate the deficiencies of either the guidelines or the site by substituting a new set of guidelines which is based upon the subjective opinion by unspecified persons that the site may perform satisfactorily, a process which has no support in law. My office will have no choice but to challenge this improvident decision, if pursued, in court.

THE REQUIREMENTS OF SECTION 112(a) OF THE NUCLEAR WASTE POLICY ACT WILL BE VIOLATED BY THE PROPOSED RULE.

The proposed rule does not comply with the clear direction of Section 112(a) of the Nuclear Waste Policy Act which clearly requires that the siting guidelines specify factors that qualify or disqualify any site from development as a repository.

"Such guidelines shall specify detailed geologic considerations that shall be primary criteria for the selection of sites. . . . Such guidelines shall specify factors that qualify or disqualify any site from development as a repository, including factors pertaining to the location of valuable natural resources, hydrology, geophysics, seismic activity, and atomic energy defense activities, proximity to water supplies, proximity to populations, the effect upon the rights of users of water, and proximity to components of the National Park System, the National Wilderness Preservation System, or National Forest Lands. Such guidelines shall take into consideration the proximity to sites where high-level radioactive waste and spent nuclear fuel is generated or temporarily stored and the transportation and safety factors involved in moving such waste to a repository. . . . Such guidelines also shall require the Secretary to consider the cost and impact of transporting to the repository site the solidified high-level radioactive waste and spent fuel to be disposed of in the repository and the advantages of regional distribution in the siting of repositories.

Under the DOE's proposed amendment to the siting guidelines "Discrete, independent findings on individual technical factors would not be required." 61 Fed. Reg. 66160. But independent findings on individual technical factors is required by Section 112 (a). Those technical factors which should make up the guidelines must be "use[d] . . . in considering

candidate sites for recommendation [to the President for development as a repository] under subsection (b) of this section." The Ninth Circuit Court of Appeals has ruled that "the site recommendation guidelines, issued pursuant to section 112(a) of the NWPA, 42 U.S.C. §10132(a) (1988) require the Secretary to address site ownership and jurisdiction issues as well as transportation issues in any recommendation he [she] makes to develop Yucca Mountain as a repository site. *Watkins III* at 1086, note 9. Predictably, in a case which my office may be compelled to bring, the Ninth Circuit Court of Appeals will likely hold that the siting guidelines must also require that the Secretary address the other independent factors listed in section 10132(a) in advance of recommending Yucca Mountain for development as a repository.

In its "Description of Proposed Action" the Department states that:

the DOE has now determined that a system performance assessment approach provides the most meaningful method of evaluating whether the Yucca Mountain site is suitable for development of a repository. The performance assessments (4-6) conducted to date have consistently driven the DOE to focus its evaluation of the Yucca Mountain site on those aspects most important to predicting how the overall system will perform in isolating and containing waste. *61 Fed. Reg. 66160.*

Overall system performance is not, however, the determination required by section 112(a). The Department is not permitted to "focus its evaluation," but rather to determine how Yucca Mountain stacks up against all the statutorily required technical factors.

Although Congress's 1987 Amendments to the Nuclear Waste Policy Act "eliminat[ed] the [Department's] authority to consider other potential sites" for development, or consider them as alternative choices in the Department's final environmental impact statement, 42 U.S.C. 10134(f)(3); (*Watkins III, supra*), Congress did not eliminate the requirement that the

Department compare what it learns about Yucca Mountain against what it knows about other sites as a means of evaluating the competency of Yucca Mountain as a repository site. Had Congress wanted to eliminate that requirement, it could have repealed or amended section 112(a). Congress has not.

THE DEPARTMENT DERIVES IMPROPER AND WRONG CONCLUSIONS FROM THE AUTHORITIES ON WHICH IT RELIES TO SUPPORT ITS PROPOSED AMENDMENTS.

The Department relies on language within the Conference Report on the Fiscal Year 1996 Energy and Water Development Appropriations Act, H.R. Rep. No. 293, 104th Cong., 1st Sess, 68 (1995) and the Report on the Energy and Water Development Appropriations Act, 1997, H. R. Rep. No. 782, 104th Cong., 2d Sess. 82 (1996) for the suggestion that Congress is prepared to accept a subjective "performance assessment" approach in place of an objective technical factor approach to site suitability. It is an elementary principle of statutory interpretation that construing courts need not consider the legislative intent contained in committee reports or individual expressions of members where an unambiguous statute provides clear direction. The clear direction of section 10132(a) obviously prevails over later observations about its meaning, notwithstanding the fact that individual, pro-nuclear utility oriented members of the Congress, Congressional committees or the Department of Energy would impose a different interpretation. The Department misconstrues those statements in any event. The direction of the Conference Report on the Fiscal Year 1996 Energy and Water Development Appropriations Act, H.R. Rep. No. 293, 104th Cong., 1st Sess, 68 (1995), that the Department "refocus the repository program on completing the core scientific activities at Yucca Mountain" and "collect the scientific information needed to determine the suitability of the Yucca Mountain site," *61 Fed. Reg.*

received
#11 2-3-97

Innoventech, Inc.
P.O. Box 1238, Pahrump, NV 89041-1238

Voice-Mail: (702) 387-7213
Return FAX: (702) 751-0739

FAX COVER SHEET

Date: Jan. 24, 1997

FROM: Robert W. Bass, M.A. Oxon, Ph.D.
Registered Patent Agent 29,130
rbwtbass@pahump.com
Unlisted personal: (702) 751-0932

TO: ALLEN BENSON

FAX NUMBER: (702) 794-5431 ;

Number of Pages, including This Sheet: 5

To: allen_benson@notes.ymp.gov (Allen Benson)
From: rbrtbass@pahrump.com (Robert W. Bass)
Subject: Follow-up to my Public Testimony

cc: Editor: Las Vegas Review-Journal
cc: Editor: (Las Vegas) Sun
cc: Drs. Miley & Kim

Allen B. Benson
Director, Office of Institutional Affairs
U.S. Department of Energy (DOE)
Office of Civilian Radioactive Waste Management
Yucca Mountain Project

1551 Hillshire Drive, Suite A
Las Vegas, NV 89134
(702) 794-1411; FAX (702) 794-5431
allen_benson@notes.ymp.gov

Dear Mr. Benson,

Thank you for giving me your card with your e-address.

Please note that the single sentence which I propose to add to the Proposed Revised Guidelines is:

- (a) constructive [not merely negative castigation];
- (b) face-saving for the Secretary of Energy.

If what I am claiming has been done and published in refereed archival journals is not replicable by the DOE labs, then the sentence I propose would be inoperative! Notice that I have placed the burden of proof on the minority-group of nuclear physicists whose opinions I share! If the obsolete dogmatists running the National Academy of Science and the Office of Energy Research at DOE Headquarters continue to insist that my proposed "providential solution" for the present crisis is "physically impossible," then ask them WHY they would object to the addition of my proposed sentence, since it places

upon the minority-dissenters a very high burden of public demonstration which, if the existing dogmatists are correct, can not be met?

The two best-credentialed dissenters who come immediately to my mind are:

- (1) Dr. George Miley, U of Illinois, Urbana-Champaign;
Fusion Studies Lab & long-time Editor of
"Fusion Technology" journal:
g-miley@uiuc.edu
- (2) Dr. Yeong Kim, Prof. of Nuclear Physics, Purdue.
yekim@physics.purdue.edu

both of whom presented papers at the recent "2nd International Conference on Low-Energy Nuclear Transmutations."

If the DOE-Hq dogmatists are truly certain in their hearts that the dissenters are scientifically mistaken, they would have no objection to adding the constructive sentence I propose; however, if they object to it, then the only logical reason for such objection would be that they are secretly afraid that the dissenters might be right (which would adversely affect their own status & privileges), which is an **IGNOBLE** motive for censorship!

Please do not fail to warn the Secretary of Energy that the activist dissenters who object to the nation's high-level wastes being trucked into Nevada are dead-serious! If DOE trucks drive over and kill Non-Violent Protestors, the Federal Government will be starting a new Civil War! Notice that Nevada's Governor, both Senators, and most local opinion-makers (regardless of differences on many political issues) are **UNITED** in their opposition to the "Screw Nevada Bill." Does the DOE truly want to be responsible for starting a new Civil War?

Before I presented my Testimony, the highest-level DOE officials were merely guilty of

CULPABLE DERELICTION OF DUTY.

(Don't forget that Admiral Short was Court-Martialed for being asleep on his watch at Pearl Harbor.) How can the DOE explain the fact that the Japanese have started a \$50Million "cold fusion" research institute, whereas the

POLITICIZED MANAGERMENTS

of the DOE Labs continue to insist that "cold fusion" is a mirage? I personally know many EXCELLENT scientists at the DOE Labs who tell their most trusted friends privately that they would like to work on cold fusion & low-energy nuclear transmutation but are afraid of being punished by their bosses! Someday this will be a scandal worse than "who lost China?" and the dogmatists presently responsible will be exposed to historical obloquy, if not jail-sentences. Indeed, now that I have placed indisputably upon the historical record that there is a

LESS EXPENSIVE, SAFER SOLUTION

then these dogmatists will be guilty of

CRIMINALLY CULPABLE DERELICTION OF DUTY

if they continue to ignore and to censor minority-dissenting views.

Thank you for your attention.

Sincerely,

Bob Bass

----- OFF THE RECORD -----
----- Business CONFIDENTIAL -----
----- NOT for Public Quotation! -----

P.S.

If you get the sentence added to the proposed guidelines, there will be immediately forthcoming enough private investment funds to demonstrate the Low-Energy ANNIHILATION of Radionuclides on a sufficiently massive scale that the public will demand the adoption of this allegedly heretical new technology, and the DOE will be off the hook! As proof I cite the following business-CONFIDENTIAL information.

I know a patent attorney, Mr. X, who is so brilliant that while he was a high-school student in Princeton, the University allowed him to attend graduate courses in physics. During the past 8 years, he has had only 2 clients, one of them being a well known multi-billion DOE contractor, corporation Y, which reportedly presently has a multibillion contract with the DOE to remediate certain nuclear wastes now stored in liquid form in vast quantities. Mr. X has the confidence of the Chairman & President of corporation Y. After I drafted the Patent

Application on the Neal-Gleeson Process, Mr. X revised my first draft until he was totally satisfied that it would pass muster at corporation Y, before I filed it. He then told my clients, verbally, "if you can get CREDIBLE 3rd party verification of your technology [such as in Vice President Al Gore's home state by the DOE lab at Oak Ridge, TN, or by George Miley at UIUC], then I will recommend to the Chairman of corporation Y that they offer to purchase your patent for \$250 Million with a \$25 Million down-payment!" Since my clients are unwilling to sell at any price, the situation is at an impasse. However, if the DOE added the sentence I propose, then private funds would materialize that would permit my clients to make an IMMEDIATE large-scale public demonstration. This would get the DOE off the hook and would provide a providential constructive solution that would be clean, safe, ANEUTRONIC, and otherwise environmentally ideal and would satisfy the anti-FISSION activists (who are not yet aware of the benefits of Cold Fusion). The DOE ought to pay Clean Energy Technology, Inc. the annual leasing fee of \$3,750 for one of the do-it-yourself Demonstration Kits from CETI in order to verify that Cold Fusion is a reality. If they continue to insist dogmatically that Cold Fusion is a mirage, then the Public Testimony of the 20 scientists or institutions now testing the CETI kits (offered for sale at the last meeting of the American Nuclear Society) will cause them to become INDICTABLE for Criminal FRAUD ON THE PUBLIC!

Jan. 27, 1997

received
#12 2-3-97

April V. Gil

U.S. Dept. of Energy
Office of Civilian Radioactive Waste Man-
agement
Characterization Office

P.O. Box 98608

Las Vegas, Nevada 89193-8608

Dear Ms. Gil:

The Dept. of Energy should with-
draw its proposed rule of exemption
for Yucca Mt. as a waste dump. Besides,
the Mountain should have been disqualified
already because it has major fault
lines running thru the waste area. This
region is comparable to San Francisco
in its level of seismic activity. Also, the
rock of the mountain is fractured. The
lowering of standards, specifically for
Yucca Mt., is unconscionable! The
proposed rule would preserve a high
standard for other sites but not Yucca.

Part of lowering standards
for Yucca is to ignore the dangers of

transporting the waste - across
many states, including my state of
California. How awful! This decision
will affect the next 12,000 human gen-
erations and is dangerously inadequate.
During all those millenia of transport-
ing radioactive waste, accidents will
surely occur.

We should not be generating
nuclear waste at all, and the waste
that occurs should be buried at the
site of generation. I do not look
forward to having dangerous convoys
of radioactive material cruising down
California highways. I do not under-
stand what national madness has
led us into this nuclear nightmare.

Sincerely,
M. Ruth Niswander
622 Barbara
Davis, Ca. 95616

RICHARD BRYAN

NEVADA

COMMITTEES

FINANCE

BANKING, HOUSING, AND
URBAN AFFAIRSCOMMERCE, SCIENCE, AND
TRANSPORTATION

INTELLIGENCE

United States Senate

364 RUSSELL SENATE OFFICE BUILDING
WASHINGTON, DC 20510-2604
(202) 254-6244

February 3, 1997

The Honorable Charles Curtis
Acting Secretary
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585received
#13 2/4/97OFFICE
600 S. VIRGINIA STREET
SUITE 702
RENO, NV 89501
(702) 685-6770200 LAS VEGAS BOULEVARD SOUTH
SUITE 1510
LAS VEGAS, NV 89101
(702) 388-9605800 EAST WILLIAM STREET
SUITE 304
CARSON CITY, NV 89701
(702) 688-6111

Dear Mr. Secretary:

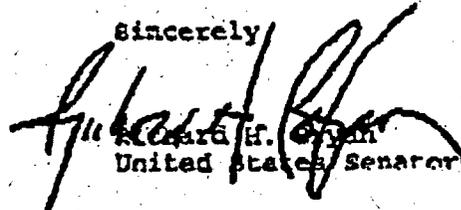
I am writing to register my strong opposition to proposed rulemaking by the Office of Civilian Radioactive Waste Management (OCRWM) titled "General Guidelines for the Recommendation of Sites for Nuclear Waste Repositories" published in the Federal Register on December 16, 1996. In addition, I strongly urge you to extend by at least 120 days the comment period on these proposed changes, and arrange for a comprehensive series of hearings on the subject at the earliest possible date.

The proposed changes to the siting guidelines would represent yet another in a long series of broken commitments of the Department of Energy to the people of Nevada. A change from demonstrating compliance with a variety of important health and safety factors, as required by the Nuclear Waste Policy Act, to a simple estimation of whether or not the repository can meet a single radiation release standard reduces public confidence in the suitability determination and places the health and safety of Nevadans at risk. The proposed change is wholly inappropriate, and will, if made final, justifiably result in a lawsuit against the DOE from the State of Nevada.

In addition to being completely misguided for substantive reasons, the Department of Energy's token efforts to meet its obligations for public input further compromise the integrity of any eventual suitability determination by the Department. At a minimum, the Department should provide for at least an additional 120 days for public comment, and schedule a series of hearings in a manner which allows substantial and exhaustive public comment. The one day hearing on the subject recently completed in Nevada is completely inadequate for a proposed change of the magnitude suggested by the OCRWM on December 16.

I appreciate your attention to this matter, and look forward to your response.

Sincerely



Richard H. Bryan
United States Senator

Women Speak Out for Peace and Justice

branch of

WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

P. O. Box 18138 — Cleveland, Ohio 44118



January 28, 1998

April V. Gil
U.S. Department of Energy
Office of Civilian Radioactive Waste Management
Yucca Mountain Site Characterization Office
P O Box 98608
Las Vegas, NV 89193-8608

received
#14 2/5/97

Dear Ms. Gill:

I am writing to comment on the DOE change in rules to exempt the Yucca Mountain Site from previous specific general site qualifications for storage of high level radioactive waste for the interim and the long term.

Throwing out the current guidelines in a rush to assure Yucca Mountain is the only site that can be considered is short-sighted. A long range, safe-for-living-things, policy is what is required seeing that 'interim' storage may be forever, and the future of thousands of generations is at stake.

Transportation to Yucca Mountain will involve 43 states. In Ohio we have experienced 692 toxic spills from 1992 through 1995. When 50 million Americans could be affected by this transportation of radioactive materials, we are being sensible in demanding a public safety plan devised in public by the affected citizens. In Ohio hazardous chemicals are banned from highly traveled routes, but HC does not include radioactive materials so all will be at risk in funnel effect from the East to Yucca Mountain.

This change must be politically rather than scientifically motivated when the Nuclear Waste Policy Act Section 112 is set aside make sure only Yucca Mountain can be selected. We at Women Speak Out for Peace and Justice/ WILPF again demand a public national debate on this issue. The charges of environmental racism must be brought against the DOE in their actions against the Western Shoshone Nation. The collusion of the Department and the Nuclear Industrial Complex seem to be the only possible explanation for these actions.

Sincerely,
Marty Grey

Environment Committee

CC: President Bill Clinton	Representative David Hobson	Representative Ralph Regula
Senator John Glenn	Representative John Boehner	Representative James Traficant
Senator Mike DeWine	Representative Marcy Kaptur	Representative Robert Ney
Representative Steve Chabot	Representative Dennis Kucinich	Representative Steve LaTourette
Representative Rob Portman	Representative Louis Stokes	Hon. Frederico Pena, DOE
Representative Tony Hall	Representative John Kasich	Lake H. Barrett, DOE
Representative Michael Oxley	Representative Sherrod Brown	US EPA Radiation Protection
Representative Paul Gillmor	Representative Thomas Sawyer	Shoshone Nation
Representative Ted Strickland	Representative Deborah Pryce	Plain Dealer