

UNITED STATES NUCLEAR REGULATORY COMMISSION AASHINGTON, D. C. 20555

12/23/86

NOTE TO: Interested Parties

FROM:

Nancy Still, Project Manager State/Tribal Participation

Division of Waste Management, NMSS

SUBJECT: FRN ON NEGOTIATED RULEMAKING

Enclosed for your information is a Federal Register Notice, dated 12/18/86, regarding a Notice of Intent to form an advisory committee to negotiate a proposed rule on the submission and management of records and documents related to the licensing of a HLW geologic repository.

> Nancy Still, Project Manager State/Tribal Participation Division of Waste Management

Nancy Still

Enclosure: As stated

approved office as may be selected by you or

designated by us.

0. "Tenant" means a person who muts land from another person for a share of the tomatoes or a share of the proceeds therefrom.

p. "Tomatoes grown for direct consumer marketing" means tomatoes grown for the purpose of selling directly to the consumer.

q. "Unit" means all insurable acreege of tomatoes in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or (2) Which is owned by one person and operated by another person on a share

Lend rented for cash, a fixed commodity payment, or any consideration other than a share in the tomatoes on such land will be considered as owned by the lessee. Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bone fide share or the bone fide share of any other person having an interest therein.

18. Descriptive Headings. The descriptive headings of the various olicy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400—Subpart

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC. on November 34. 1986.

Edward Hows

Manager, Paderal Crop Insurance Corporation.

[FR Doc. 88-28413 Filed 13-17-80; 8:45 am] BILLING CODE \$410-00-00

DEPARTMENT OF JUSTICE

8 CFR Part 109

Employment Authorization; Classes of Allens Eligible

NOEMCY: Immigration and Naturalization jervice, Justice.

ACTION: Extension of comment period of petition for rulemaking.

SUMMARY: Passage of Pub. L. 99-603 created a new section of law containing a definition of "unauthorized alien" that appears to have a direct bearing on the issues to be considered in the petition for rulemaking published October 28, 1986 (\$1 FR 39385). The Service has extended the deadline for submitting written comments in order to allow the public additional opportunity to study the petition in view of the new law. DATE: Comments are now due on or before January 28, 1987.

ADDRESS: Please submit comments in duplicate to the Director. Office of Policy Directives and Instructions. Immigration and Naturalization Service, 425 I Street, NW., Room 2011, Washington, DC 20536.

POR FURTHER INFORMATION CONTACT:

FOR GENERAL INFORMATION: Loretta Shogren, Director, Policy Directives and Instructions, **Immigration and Naturalization** Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3048

FOR SPECIFIC INFORMATION: Michael L. Shaul. Senior Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-3946

SUPPLEMENTARY INFORMATION: Ott October 28, 1986 the Immigration and Naturalization Service ("the Service") published a Petition for Rulemaking based upon a petition which had been received from the Federation for American Immigration Reform ("FAIR") setting forth the position that the Service had exceeded its authority in promulgating regulations at 8 CFR 109.1(b) allowing illegal or temporarily present alians to apply for and receive work authorization. The Service published the FAIR petition without comment and invited the public to comment and assist the Service in determining whether to proceed with the rulemaking sought by the petition. The October 28, 1988 notice in the Federal Register called for the submission of written comments on or before December 29, 1986.

On November 6, 1986 the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) became law. Public Law 99-603 created section 274A of the immigration and Nationality Act. Included in that section is a definition of the term unauthorized alien" at 274A(h)(3):

DEFINITION OF UNAUTHORIZED ALIEN-As used to this section, the term 'unauthorized alien' means, with respect to the employment of an alien at a particular time, that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this Act or by the Attorney

Because this new section of law appears to have a direct bearing on the issues to be resolved in consideration of the FAIR petition, the Service is requesting that comments be made in light of this definition of "unauthorized alien". The Service is also extending the period for submission of written comments by thirty days until January 28, 1987 in order to allow the public sufficient time to study the matter in light of this new factor.

Dated: December 15, 1986. Richard E. Norton. Associate Commissioner, Examinations, Immigration and Naturalization Service. [FR Doc. 86-28398 Filed 12-17-86; 8:45 am] MILLION COOR ALSS-19-88

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

Rule on the Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste; Intent To Form an Advisory Committee for Negotiated Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to form an advisory committee to negotiate a proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering formation of an advisory committee under the Federal Advisory Committee Act, to devoles recommendations for reducion of the Commission's discovery rules. and selected other rules of practice in 10 CFR Part 2. related to the adjudicatory proceeding for the issuance of a license for a geologic repository for the disposal of high-level (HLW). Specifically, the committee would attempt to negotiate a consensus on proposed revisions related to the submission and management of records and documents for the HLW licensing proceeding. The committee would be composed of organizations representing the major interests affected by the rule. This notice provides a preliminary identification of interests that may be represented on the committee, and the issues that the

committee may consider. The notice also invites public comment on potential participation on the committee and on the rulemaking issues identified for negotiation.

DATE: Submit comments by February 17. 1967. Comments received after this date will be considered only if it is practical

ADDRESS: Send comments to the Secretary, U.S. Nuclear Regulatory Commission, Washington DC 20555. Attn: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT:

Francis X. Cameron, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555, Telephone: 301-492-8689 Kenneth L. Kalman, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555, Telephone: 201-427-4071.

SUPPLEMENTARY INFORMATION:

Background

Under section 114(d)(2) of the NWPA, the NRC is required to issue a final decision approving or disapproving issuance of a construction authorization for the high-level waste repository no later than three years after the date of submittal of the DOE license application, with a possible extension of twelve months for good cause. If the NRC is to meet the statutory deadline for making its decision on construction authorization, specific measures must be taken to streamline the NRC review process. One such measure is the development of an electronic information management system to provide parties to the licensing proceeding with ready access to all relevant documents.

One of the most significant contributions to the length of licensing review has been the time associated with sending, receiving, and handling of information and data. This is true for docketed correspondence between receivers and applicants, for discovery by the production of documents and by interrogatories, and service of documents during adjudication. Current technology for electronic storage, retrieval, and mail could substantially reduce the time needed for information

processing.

If the Commission is to reach its construction authorization decision within the allotted timeframe, it will be necessary to facilitate the discovery process, as well as to reduce the delay normally associated with the physical service of documents. Hence, the information and data supporting a DOE application should be made available to all interested parties before the application is submitted and formal NRC review begins. This would entail DOE development of a licensing information system that would provide ready access to all pertinent documents. The system would not involve the generation of new data, but rather, would capture in electronic form, all the data that would normally be generated to the licensing decision. As such, it would serve as a means for efficient management of the information to be used in the licensing decision.

Ideally, all parties to the licensing proceeding would provide access to all relevant data within their control by making it available in a standard electronic format for easy incorporation into a centralized computer data base in the licensing information system. Appropriate safeguards would have to be provided and a "no access" file for privileged data would have to be created. All parties, as well as interested State, local, and tribal governments would then have open access to the licensing information system, with the exception of data in the privileged file. Commission requirements for system performance are that ready access to the system would be available at minimal cost to the user. The Commission proposes to implement this process through a rulemaking which would require all parties to the high-level waste licensing proceeding to place all of their relevant documents in the data base and to use the licensing information data base as the sole information base for discovery purposes.

Because all relevant licensing information would already be available through access to the information management system, this type of process would eliminate the traditional filing of first round discovery requests and accompanying search times by the party from whom the records were requested. It would also eliminate the mailing time associated with the request and the response, and would eliminate or reduce requests for extensions of time because documents were not provided or because adequate search time was not available. Furthermore, it will ensure, to the extent practicable, the availablility of data at the earliest possible time, thereby facilitating the early resolution of licensing issues.

To ensure that the information and data are readily available to all participants, NRC staff believes that the DOE license application and all records relevant to the application should be submitted in a standardized electronic format. The standardized electronic

format will ensure compatibility of information and data submitted by parties to the licensing hearing. It would also eliminate the need to re-key information and data into an NRCaccessible system. The compatible information and data would then be accessible to all interested parties (States, Tribes, and others).

In agreement with DOE, NRC will carry out a pilot project to demonstrate document storage and retrieval capabilities and to develop processes that could lead to an interim system for use within the NRC (and possibly by others) until the DOE's full information management system, formally known as the Licensing Support System (LSS) is implemented. The experience gained from the pilot project will be made available to DOE for use in expediting the definition of requirements for the

In addition, NRC is participating with DOE on an Interagency Coordinating Committee (ICC) whose purpose is to provide a preliminary evaluation of the major issues related to the development and implementation of the LSS. The ICC has met several times, with the assistance and participation of States. Indian Tribes, and the public. Much of the planning and background information developed by the ICC will be useful to the negotiating committee in developing the final recommendations on the use of the LSS in the Commission's HLW licensing process. However, the Commission emphasizes that the use of the LSS in the Commission's licensing proceeding, and any related design issues, will ultimately be dictated by the Commission's rulemaking on this issue, whether the rule is developed through the negotiated rulemaking process or by the Commission on its own initiative Although the ICC, with the participation of the States and Tribes, will allow DOE to begin planning the development of the system in the period during which the negotiating committee is being constituted, the ultimate decision on the nature of the system and its use will be made within the context of the Commission's rulemaking, with the negotiated rulemaking as the first step in that process.

The Negotiated Rulemaking Process

The Commission intends to use the process of "negotiated rulemaking" to develop the proposed rule that would revise the Commission's discovery procedures and motion practice in 10 CFR Part 2 for the high-level waste licensing proceeding. In negotiated rulemaking, the representatives of

parties who may be affected by a rulemaking, including the agency convene as a group over a period of time to try to achieve consensus on the rulemaking issues. The agency represents one essential party in the negotiation, with the same rights and responsibilities as any other party. If the negotiating committee does reach a consensus, the committee prepares a report to the agency containing the proposed rule. The agency would then use the consensus report as a basis for a notice of proposed rulemaking. The consensus is the basis for the proposed rule published for public comment, not the final rule. The agency retains the responsibility to develop the final rule on the basis of notice and comment procedures. If the negotiating committee cannot reach consensus, the Commission will proceed to develop the rule on its own.

Negotiated rulemaking offers an opportunity for comprehensive treatment of the issues and creative solutions because all those with ideas on how to solve the problem are present at the discussions and can react directly to each others concerns and positions. It will be particularly important in this rulemaking for all affected parties to communicate directly on a set of uniform and compatible system requirements because of the diverse information systems now in use by these parties. In addition, because the intervenors in the HLW licensing proceeding may possess substantial research data, it is important that they participate fully in the licensing information management system. The Commission believes that negotiated rulemaking will encourage this participation.

Participation by affected interests in the development of the proposed rule will be important in terms of the credibility of the information management system, i.e., the belief that all relevant documents have been entered and that the system is secure from tampering. In this respect, negotiated rulemaking should increase the acceptability and enforceability of the rule. Affected interests will be less likely to resist its enforcement, lobby against its implementation, or challenge it in court.

Negotiated rulemaking has been used successfully by other agencies, and the Commission believes that it is appropriate to use this technique to develop the rulemaking on the HLW licensing information system. This particular rulemaking involves the resolution of many issues, such as what data should be entered into the system.

how to ensure that all relevant documents are entered, what types of data will be privileged, security and access issues, sanctions for withholding data, and appropriate modification of the discovery rules. These issues must be resolved to the satisfaction of all affected interests to ensure that the benefits of the rulemaking are achieved. The likelihood of developing a consensus in this area is high because of the mutual benefits that could be realized by all parties.

This would be the Commission's first experience with negotiated rulemaking. Its use, in appropriate situations, has been encouraged by the Administrative Conference of the United States (ACUS). See ACUS Recommendation 82-4 (47 FR 11024; 03-15-82) and 85-5 (50 FR 52863; 12-27-85). The Environmental Protection Agency (EPA), and the Federal Aviation Administration (FAA) have completed successful negotiated rulemakings. The ACUS has reviewed these attempts and concluded that its endorsement of negotiated rulemaking was sound.

1. Feasibility

The NRC staff has had preliminary discussions on the development and use of an electronic information management system in the HLW licensing proceeding, and on the possibility of using negotiated rulemaking to institute this system, with many of the parties that would be potentially affected by the rulemaking This has included DOE and those having special interests under the NWPA—the States and Tribes. Public interest groups have also been approached. The professional mediators that the Commission has engaged to conduct the negotiated rulemaking will make further inquiries among a broad range of parties to determine (1) whether representatives of essential parties would agree to participate in the negotiated rulemaking process, (2) the specific individuals who might represent those parties, (3) the preliminary scope of the Issues to be addressed, and (4) the timetable for the negotiating process.

On the basis of preliminary analysis and inquiries, the Commission believes negotiated rulemaking in a feasible mechanism for developing the proposed rule. However, the professional mediators will be further evaluating the feasibility of using the negotiated rulemaking process, and their report, as well as any comments submitted in response to this Notice, will be considered before the Commission proceeds with the negotiated rulemaking.

2. Convenor/Facilitators

Under the umbrella of the Council on **Environmental Quality contract for** negotiated rulemaking services, the Commission plans to employ the Conservation Foundation of Washington, DC, to oversee the negotiated rulemaking process. Gail Bingham, Senior Associate of the Foundation will act as Project Manager for the negotiation. The Conservation Foundation negotiating team has had extensive experience in multi-party dispute resolution, including experience in negotiated rulemaking. The Conservation Foundation negotiating team has not had any prior involvement with the substantive content of this particular rulemaking.

As noted above, the Conservation Foundation, in the exercise of its responsibility as convenor, will be contacting potential participants on the negotiating committee, and will prepare a feasibility analysis of the negotiation for the Commission's consideration. The facilitator from the Conservation Foundation will chair the negotiating sessions, assist individual parties in forming and presenting their positions, and offer suggestions and alternatives that would help the negotiating committee reach consensus.

3. Participants

The Commission has identified several interests that may be affected by this particular rulemaking. These interests include—

- The NRC as the sponsoring agency
- The Department of Energy
- States potentially affected by the aiting of the repository
- Indian Tribes potentially affected by the siting of the repository
- Local governments potentially affected by the siting of the repository
- National environmental public interest groups potentially affected by the siting of the repository
- National energy development public interest groups potentially affected by the siting of the repository or
- Local environmental public interest groups potentially affected by the siting of the repository
- Local energy development public interest groups potentially affected by the siting of the repository
- States, Tribal governments, and local governments potentially affected by the transportation of HLW
- Ratepayers, represented by the National Association of Regulatory Utility Commissioners, or a similar association

 Utilities, represented by the Utility Nuclear Waste Management Group, or a similar association

Although not all of these parties may actually participate in the Commission's HLW licensing proceeding, they all have an interest in the efficiency and adequacy of the process that the Commission uses to ultimately arrive at a final decision on the DOE license application. These interests could be represented by several parties acting in their individual capacities, or by a single party representing several groups in a particular class. The Commission will make a final determination on the identity of the parties that will participate in the negotiated rulemaking based on the convenor's report and the comments received in response to this notice.

The Commission will consider parties for membership on the basis of (1) their direct, immediate, and substantial stake in the rulemaking. (2) whether they may be adequately represented by another party on the committee, and (3) whether their participation is essential to a successful negotiation. However, the Commission does not believe that every individual or group actually or potentially affected by this rulemaking must have its own member on the committee. Rather it is sufficient if each major interest affected by the rule is adequately represented on the committee. The Commission also anticipates that particular groups or individuals may choose not to participate because they believe that the effects of the rulemaking on their interests are limited or speculative, or because they are already adequately represented on the negotiating committee. For example, with the DOE deferral of the site-specific aspects of the second repository program, many "second round" States and Indian Tribes may feel that their interests on the negotiating committee are adequately represented by participation of the "first round" States and Indian Tribes. In addition, to keep the negotiating committee at a manageable size, the Commission may need to consolidate the participation of "second round" States and Indian Tribes in light of the DOE deferral of a site-specific second repository program. However, the Commission welcomes expressions of interest from all potentially affected groups, including those whose stake in the rulemaking may only be speculative at this point. Requests for representation must be made in writing by the date appearing in the notice.

It is important that the negotiating committee be kept to a manageable size in order to maximize the efficient operation of the committee and the chances for success. The ACUS has recommended 15 members as a optimum size, but negotiated rulemakings have also been successfully conducted with as many as 25 committee members. The Commission anticipates proceeding with the negotiation if a substantial number of essential interests are willing to participate.

The Commission will encourage the consolidation of groups/persons with like interests in order to reduce the number of participants in the negotiations. Furthermore, the Commission will use the selection criteria set forth above to exclude interested parties only as a last resort. The Commission itself will make the determination on who will be permitted to participate, if such a decision must be

Any individual or group not sitting as a member of the committee, and the public generally, will be provided with an opportunity to comment on any proposed tule developed as a result of the negotiating process. In addition, nonparties will also have an opportunity to attend the meetings of the negotiating committee, and to submit information to the negotiating committee, under the Federal Advisory Committee Act.

4. Qualifications of Representatives

Participants on the negotiating committee must be willing to negotiate in good faith. In this regard, it is important that senior individuals within each party participating in the negotiation, including the NRC, be designated to represent that party. The Commission has designated William J. Olmstead, Assistant General Counsel for Rulemaking and Fuel Cycle, as its representative. Although the individual representative will not be required to "bind" the party be or she represents in terms of making an "on the spot" commitment on any issue that may arise at a particular negotiating session, the representative must have sufficient seniority and delegated responsibility to authoritatively represent the views of the party.

5. Federal Advisory Committee Act

In accordance with the requirements of the Federal Advisory Committee Act. 5 U.S.C. App., and the Commission's regulations in 10 CFR Part 7, the Commission is, by this notice, indicating its intent to charter the negotiating committee as an advisory committee. The draft charter will be submitted to the General Services Administration. (GSA) for its review under 41 CFR Part

In line with the GSA guideline that it is the responsibility of each agency to make a good faith effort to meet its advisory committee membership requirements on a noncompensated basis, 41 CFR 101-6.1033, the Commission is not providing any direct funding to the individual members on the negotiating committee. The Commission anticipates that the parties to the negotiation will either be able to cover expenses through funds provided by DOE under the NWPA or will be financially capable of covering their own expenses. In exceptional cases, where an essential group will be unable to participate due to the lack of funds, the Commission will have the convenor for the negotiation attempt to arrange funding through a nonprofit organization.

The Commission is providing complete support for the operation of the committee, including funding for a professional convenor/facilitator to assist the negotiating committee in reaching consensus, funding for the training of participants on the principles of negotiation, provision of background information to the negotiating committee on the technical and legal aspects of the rulemaking, provision of all logistical and administrative support for committee operations, and provision of Commission legal and technical staff to

assist the committee.

In accordance with the Commission's regulations in 10 CFR Part 7, advance notice of negotiating committee meetings will be provided in the Federal Register, the meetings of the full negotiating committee will generally be open to the public, members of the public will be allowed to submit written statements to the committee, and detailed minutes of each meeting will be recorded and available for public review and copying.

6. Committee Procedures and Meetings

Under the general guidance of the convenor/facilitator, the committee will establish detailed procedures for conducting committee meetings. To assist the committee, the convenor facilitator is preparing draft procedures for committee review. These draft procedures address such issues as the definition of consensus and the use of working groups and caucuses

The Commission anticipates that approximately nine two-day meetings will be required to fully implement the negotiating process for this rulemaking. This series of meetings will take place over a period of nine months beginning in early 1967. Approximately one-half of the meetings will be held in Washington.

DC, and the remaining meetings will be beld at regional locations. The first meeting of the negotiating committee will be organizational in nature, focusing on dates, times, locations, and procedures for future meetings. The Commission also intends to sponsor a one day training session on the principles of negotiation for the committee as part of this first meeting. Negotiating sessions would begin approximately one month after the initial organizational meeting and continue monthly thereafter. The Commission is prepared to provide detailed information to the negotiating committee on the legal and technical aspects of the rulemaking during the initial sessions.

7. Notice of Proposed Rulemaking

The negotiating committee's specific objective will be to reach consensus on the terms of a notice of proposed rulemaking. To the extent that the negotiations are successful, the committee will prepare a report describing the factual basis on which the committee developed its proposals. The Commission will provide drafting assistance to the committee in this regard. If consensus is not reached on some issues, the report should identify the areas of consensus, the areas in which consensus could not be reached. and the reasons for non-agreement.

The Commission agrees to issue for comment any proposed rule prepared by the negotiating committee unless the Commission finds that the proposed rule is inconsistent with its statutory authority or is not appropriately justified. In that event, the Commission would explain the reasons for its decision. Adoption of any final rule will be based on consideration of any comments received on the proposed rule and other materials constituting the rulemaking record.

4. Failure to Reach Consensus

The Commission plans to dissolve the negotiating committee if the participants do not reach consensus within eight months after the first committee meeting. The Commission retains the discretion to dissolve the committee of an earlier time if the Commission determines that the committee's activities are being carried out in the public interest. If the negotiating committee is unable to reach consensus on any of the issues raised for discussion, the committee will prepare a report identifying the reasons for failure to achieve consensus. In the absence of consensus, the Commission has direted the NRC Staff to develop a proposed rale on an expedited basis.

9. Issues for Negotiation

The Commission has identified a number of issues appropriate for consideration by the committee. The convenor/facilitators will also be soliciting the views of potential parties on additional issues that may be appropriate for discussion. In addition, the Commission invites any interested person to suggest issues relevant to this rulemaking. The Commission anticipates that additional issues will be considered by the committee as they arise. The following is a preliminary list of issues and is not intended to be a rigid agenda for the committee's deliberations

 What categories of information will be relevant to the HLW licensing decision, and therefore should be placed in the LSS?

 What timeframe should be used for the identification of relevant documenta?

 How should drafts, handwritten notes, and handwritten annotations be bandled?

 What rules should apply to privileged information i.e. what documents are privileged and at what : point in time should they be placed in

 At what time will parties, or potential parties, to the licensing proceeding be required to enter documents into the LSS? How can the early entry of data be encouraged?

What organization will be

responsible for administering the LSS?

• What procedures should be established to ensure that all relevant documents are entered into the LSS?

 What procedures will apply to any documents that are incorrectly excluded from the LBS?

 What measures, including sanctions, will be used to ensure that all relevant documents are entered into the LSS?

 How will the authentication of documents be handled?

 What security measures are necessary to protect the information in the LSS?

 What format should be used for the entry of documents into the LSS?

 Should all documents be entered in full text?

 Where will system access terminals be located and what types of assistance will be available on using the system?

 How will the electronic submission of documents be handled?

Final Notice

After evaluating the comments on this ennouncement, including requests for representation on the committee, the Commission will make a determination

on whether to establish a negotiating committee under the Federal Advisory Committee Act. If the Commission decides that a committee should be formed, the Commission will announce its decision in the Federal Register.

Dated at Washington, DC, this 12th day of December 1986.

For the Nuclear Regulatory Commission. Semuel J. Chilk, Secretary of the Commission. FR Doc. 86-28400 Filed 12-17-86: 8:45 am) BILLING COOK 7868-61-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z: R-0677]

Truth in Lending: Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment a proposed revision to the official staff commentary to Regulation Z (Truth in Lending) regarding the right of rescission in the refinancing of a closed-end credit transaction. The revision relates to an amendment to Regulation Z recently adopted by the Board that redefines what constitutes a new advance of money in a refinancing that is exempt from the rescission provisions. (The regulatory amendment is contained elsewhere in this issue.) The proposed commentary provision would revise existing comment 23(f)-4 which explains what constitutes a new advance of money in a refinancing by the original creditor that would require the creditor to give a consumer the opportunity to rescind an extension of additional credit.

DATE: Comments must be received on or before january 30, 1967.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. or delivered to the 20th Street mail service courtyard entrance, 20th Street between C Street and Constitution Avenue, NW., Washington, DC, between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to R-0577. Comments may be inspected in Room B-1122 between 6:45 a.m. and 5:15 p.m. weekdays.

POR FURTHER INFORMATION: Contact Adrienne Hurt or Leonard Chanin, Staff Attorneys, Division of Consumer and

OVERVIEW OF CURRENT TRANSPORTATION ACTIVITIES: LIST OF TOPICS

Overview of Current Transportation Activities

- o Cask Development Update
- o Management Configuration Study Update
- Progress on ALARA Study
- o Progress on Development of Satellite Tracking System
- o Issue Resolution Activities
 - Inspection and Enforcement
 - Overweight Trucks
- o Emergency Response Strategy
- o Public Information Initiatives

TRANSPORTATION COORDINATING GROUP PROPOSED MEETING AGENDA

TRANSPORTATION COORDINATION GROUP MEETING Salt Lake City, Utah April 28 & 29, 1987 Proposed Agenda

April 28, 1987

- 8:30 a.m. Introduction
- 8:45 a.m. Overview of OCRWM program developments and relationship to transportation program
- 9:15 a.m. Update on transportation program activities
 - Cask development program
 - Environmental and economic analyses
 - Transportation operations
 - Management of institutional issues
- 10:15 a.m. Break
- 10:30 a.m. Discussion of transportation activity networking
- 11:00 a.m. Update on satellite-tracking test program
- 11:30 a.m. Review of progress on ALARA study
- 11:45 a.m. Review progress of CVSA task force
- 12:00 a.m. Lunch
- 1:15 p.m. Review of cask testing plan
- 1:45 p.m. Development of Transportation Plan
- 2:15 p.m. Transportation planning and coordination by DOE's Office of Storage and Transportation Systems and the Joint Integration Office
- 2:45 p.m. Break
- 3:00 p.m. DOE Project Office reports on site-specific transportation studies
- 3:30 p.m. Presentations by potential host States and affected Indian Tribes on transportation activities
- 4:15 p.m. General discussion of scope of future TCG meetings
- 4:45 p.m. Review of meeting action items
- 5:00 p.m. Meeting adjourns
- 5:15 p.m. 7:00 p.m.: Separate executive sessions for States and Indian Tribes, and DOE

Draft: 2/18/87

<u>vpril 29, 1987</u>: WORKSHOP ON MODELS FOR OCRWM TRANSPORTATION RISK ANALYSES

8:30 a.m. Introduction

8:40 a.m. Review of workshop objectives

- development/use of computer models for risk analyses conducted in support of OCRWM environmental studies
- relationship of risk analyses and associated computer models to overall modeling efforts for OCRWM transportation program

9:30 a.m.Review of risk analyses conducted for Environmental Assessments

- use of computer models
- routing/risk assumptions

10:00 a.m. Break

10:15 a.m. OCRWM presentation of proposed enhanced risk analyses

- review of computer models
- review of routing/risk assumptions
- open discussion

12:00 a.m. Lunch

1:15 p.m. Discussion of existing Federal/industry data sources

2:00 p.m. Presentations by State and Indian Tribal representatives on availability and sources of State and Tribal transportation data

3:15 p.m. Break

3:30 p.m. General discussion of data needs for enhanced risk analysis

- types of data needed
- methods of data collection
- 4:30 p.m. Review of options for continued interface between OCRWM, States, and Indian Tribes
- 4:45 p.m. Summary of workshop discussions
- 5:00 p.m. Meeting adjourns

Draft: 2/18/87

SUMMARY OF VALUES PROJECT NORTHWEST

What Is the Values Project Northwest?

The U.S. Department of Energy has an interest in and a responsibility to consult and cooperate with the affected Indian Tribes for which the Nuclear Waste Policy Act mandates participation in the repository selection process. The unique cultural characteristics of each tribe require special effort to improve communications and understanding between the affected Indian tribes and the DOE.

Our values are the lenses through which we view life and approach our business. To understand how individuals from other cultures approach life, we need to see those lenses and see how things look through them. This is the abridged summary of the Values Project Northwest.

The Values Project Northwest program is designed to facilitate communication among culturally diverse groups and organizations. For the Basalt Waste Isolation Project, it will enable the DOE and the Nez Perce Tribe and the Confederated Tribes of the Umatilla Indian Reservation to understand their own and each other's values. Participation by other groups would be possible and is encouraged. This understanding will enhance the working relationship between the parties, improve Consultation and Cooperation negotiations, and help identify issues for Environmental Impact Statement scoping activities.

The Values Project uses an established and accepted procedure to determine the basis for individual and group judgements, and perceptions of the values within and among groups. The purpose is to identify and illustrate similarities and differences among groups that may not be correctly perceived or understood within and/or among groups.

The methodology on which the project is based is Value Orientation Theory, developed by Dr. Florence Kluckhohn as a result of extensive cross-cultural research. The late Dr. Kluckhohn was a member of the Values Project Northwest Steering Committee, a group that provides ongoing advice and oversight for the project team. The value orientation model has been used extensively as a research tool and in practical applications. Among its uses have been the Harvard Values study in the Southwestern United States, improvement of social service delivery to minorities in South Florida, racial conflict resolution in South Africa, and improvement of working relationships between the Lummi Tribe in Washington with organizations involved in water resource management. Among the participants in this last project are the U.S. Forest Service, a major bank, a timber company, a utility, and soon, the Washington Department of Natural Resources.

CHRONOLOGY

C&C REPORTS TO CONGRESS

CHRONOLOGY C&C REPORTS TO CONGRESS

- o Reports were sent to the three States with candidate sites and the three affected Indian Tribes on December 23, 1986.
- o DOE recently received official comments on the reports from the following States and Indian Tribes.
 - Governor Richard Bryan of Nevada response to Secretary Herrington (1/19/87)
 - Steve Frishman of Texas response to Ben Rusche (1/16/87),
 - Governor Booth Gardner of Washington response to Ben Rusche (1/27/87),
 - Confederated Tribes of the Umatilla Indian Reservation response to Ben Rusche (1/87), and
 - Chairman J. Herman Reuben of the Nez Perce Tribe response to Ben Rusche (2/2/87)
- o DOE will send the comments, along with reports, to Congress in the near future.

INTERGOVERNMENTAL RESOURCE CENTER DISCUSSION PAPER

PROPOSAL FOR AN INTERGOVERNMENTAL

RESOURCE CENTER

DRAFT

DOE HQ NEEDS A BETTER UNDERSTANDING OF HOW AFFECTED PARTIES SEE THEMSELVES

DOE is committed to "developing and maintaining information and interaction programs that meet the needs and address the concerns of States and affected Indian Tribes, local governments, affected citizens, the general public, and other interested parties." (Mission Plan, Volume I, Chapter 4, p. 129.)

Developing and maintaining effective information and interaction programs require that DOE familiarize itself with the organization, authority, and responsibilities, as well as the needs and concerns of these parties.

At the September ISCG meeting, States and Indian Tribes expressed concern about HQ's understanding of site-specific government processes and institutional issues. They believe that a thorough understanding is necessary for effective HQ review of site-specific documents such as Monitoring and Mitigation Plans, Site Characterization Plans, and Facility-Specific Outreach and Participation Plans.

AN INTERGOVERNMENTAL RESOURCE CENTER SHOULD BE DEVELOPED AND MAINTAINED AT HO

An Intergovernmental Resource Center (IRC) will serve as a resource for OCRWM staff. Its purpose will be to provide general and site-specific information to EQ staff on the organization and plans of States, Indian Tribes, and local governments and initially will contain three major components:

- Intergovernmental Reference Materials maintained at Weston. The IRC will initially contain comprehensive plans, budgets, and legislation that are categorized by State, local government, and Indian Tribe.

 (See Attachment 1 for examples of the types of documents to be contained in the IRC.) As the IRC develops, other documents summarizing affected parties concerns will be added (e.g., litigation briefs and petitions and newsclippings.) The resource center will also provide:
 - up-to-date organization charts; and
 - descriptions of various organizations within the affected parties that have direct responsibilities for the OCRWM program (e.g., State legislative committees).
- A General Briefing Book for HQ staff developed from the IRC materials. The briefing book will provide readers with general background information about affected parties. This information will include:
 - a brief description of each affected party's organization,
 responsibilities, and authorities and
 - an index of relevant documents found in the IRC that would provide more detailed information.

- A Clearinghouse For Institutional Documents. The IRC will contain copies of the latest institutional plans and guidelines developed by the POs and HQ. Some of the documents to be included are:
 - C&C Guidelines;
 - Financial Assistance Guidelines;
 - OGR Guidelines for Intergovernmental and Public Participation
 Activities:
 - Facility-Specific Outreach and Participation Plans;
 - OCRWM Guidelines for Interactions with Communities and Local Government; and
 - Guidelines for Payments-Equal-to-Taxes

THE IRC WILL SUPPORT A VARIETY OF HQ ACTIVITIES

The activities the IRC will support include:

- o HQ planning and policy development;
- o Preparation for C&C negotiations, briefings, meetings, hearings, and workshops;
- Project Offices and affected parties, such as grant applications, impact assistance requests, and Facility-Specific Outreach and Participation Plans; and

Document development (e.g., Environmental and Socioeconomic

Monitoring and Mitigation Plans and transportation planning documents)

The Intergovernmental Resource Center will serve all OCRWM HQ staff who will be involved in the above activities. The range of users includes both technical and policy staff including those reviewing grants and developing SCPs and other planning documents. It will also be of particular benefit to OGR desk officers who need to keep abreast of State, Indian Tribal, and local concerns.

ALL PARTIES WILL BENEFIT FROM THE IRC

The IRC will be supporting the achievement of:

- o <u>Better Working Relationships</u> By gaining a better understanding of how affected parties function and what their objectives are, HQ will be able to improve communication with these parties.
- o More Informed Policy By knowing more about affected parties, HQ will be better able to develop policy that will be based on a more thorough understanding of the needs and plans of these parties.
- o <u>Better Review</u> By having original source documents at their fingertips, HQ staff will be able to provide a more efficient and informed review of PO documents and plans, as well as affected party documents (e.g., impact assistance and grant requests).

A DESCRIPTION OF HOW TO USE THE IRC WILL BE PROVIDED

Once the IRC has been developed, a briefing on its purpose, contents, and uses will be presented to the ISCG. To ensure that both DOE and affected parties are kept current on intergovernmental activities, the general briefing book will be disseminated at this meeting. Also, the briefing books, as well as an index of reference documents, will be accessible on INFOLINK. A training session will also be developed and conducted at HQ for all OCRWM staff interested in using the IRC.

Attachment 1 - Potential Documents To Be Contained In The IRC*

TEXAS

Texas Legislative Council, 1980. <u>Constitution of the State of Texas</u>, including amendments through November 1979 (and any thereafter), Texas Advisory Commission on Intergovernmental Relations, Austin, TX.

Texas State laws that pertain to the OGR program.

Clean Air Act for Texas, Tex. Rev. Civ. Stat. Ann. Art. 4477-5 (Vernon 1976 & Supp. 1984).

Endangered Species and Other Protected Wildlife, Tex. (Parks and Wild.) Code Ann. Secs. 68.001 et seq., 43.021-030, and 88.001 et seq. (Vernon 1976 & Supp. 1984).

Water Quality Control Act of Texas, Tex. (Water) Code Ann. Secs. 26.001 et seq. (Vernon 1976 & Supp 1984).

Texas State Documents List** Annual (since 1981) with monthly checklist updates.

Texas State maps.

Texas Department of Public Safety, 1980. State of Texas Disaster Plan, Division of Disaster Emergency Services, Austin, TX.

Texas Department of Water Resources, 1984. Water for Texas, A Comprehensive Plan for the Future and Technical Appendix, 2 vols., Austin, TX.

Documents that pertain to local communities.

^{*} A complete list of references is available in the reference sections of the individual Environmental Assessments. They include State, regional, and local statistics and technical reports (e.g., geology, hydrology, ecology, etc.)

^{**} Relevant documents from list will be ordered.

Attachment 1 Potential Documents To Be Contained In The IRC

WASHINGTON

Constitution of the State of Washington.

Washington State laws as they pertain to the OGR program.

Washington State Publications List *. Contains references to everything printed by the State Printer and all other materials sent to the library.

Washington State Publications Monthly Checklist *. Monthly updates to annual catalog.

Washington State maps.

Exchange of Lands--Hanford Atomic Energy Project, 1957. Public Law 88-557, 78 Stat. 766.

Treaty with the Walla Walla, Cayuse, etc., 1855. 12 Stat. 945.

Treaty with the Yakimas, 1855. 12 Stat. 951.

Treaty with the Nez Perce, 1855. 12 Stat. 957.

Wild and Scenic Rivers Act of 1968. Public Law 90-542, as amended, 82 Stat. 906, 16 USC 1271.

State of Washington, 1982a. Annual Planning Report 1982: Richland-Kennewick-Pasco SMSA, Employment Security Department, Olympia, Washington.

Documents that pertain to local communities.

^{*} Relevant documents from list will be ordered

Attachment 1

Potential Documents To Be Contained In The IRC

NEVADA

Constitution of the State of Nevada.

Nevada State laws that pertain to the OGR program.

Nevada State Documents List * From the earliest publications through September, 1985.

Nevada Official Publications List *. Irregularly issued (about 5-6 times per year) of new publications as they are released.

State of Nevada, Department of Transportation, ca.1984. Nevada Map Atlas, Fifth Edition, Carson City, Nevada.

Nevada Historic Preservation Plan, 1982. Archaeological Element for the Nevada Historic Preservation Plan, Nevada Division of Historic Preservation and Archaeology, Carson City.

Nevada Development Authority, 1984. <u>The Southern Nevada Community Profile</u>, Las Vegas, Nevada.

Clark County Department of Comprehensive Planning, 1980. <u>Indian Springs</u>, <u>Nevada</u>, <u>Comprehensive Land Use Plan</u>, Las Vegas, Nevada.

Clark County Department of Comprehensive Planning, 1982a. <u>Draft Clark County</u>, <u>Nevada</u>, <u>Comprehensive Energy Plan</u>, March 1982, Las Vegas, Nevada.

Clark County Department of Comprehensive Planning, 1982b. Comprehensive Plan, Task One, Existing Conditions (Rev.), Las Vegas, Nevada.

Clark County Department of Comprehensive Planning, 1983a. Comprehensive Plan, Task Two, Growth Forecast and Impact Analysis, Las Vegas, Nevada.

^{*} Relevant documents from list will be ordered

Clark County Department of Comprehensive Planning, 1984. Parks Program, Park and Open Space Plan, Las Vegas.

Clark County Department of Parks and Recreation, 1984. "Clark County Parks and Recreation Parks and Facilities," Las Vegas, Nevada. (Tabular Material)

Clark County Transportation Study Policy Committee, 1980. Clark County Transportation Study, Regional Transportation Plan, Final Report, Las Vegas, Nevada.

Research and Educational Planning Center, 1984. Nye County Master Education Plan, Phase I, University of Nevada, Reno.

State of Nevada, OCS (Office of Community Services), 1982a. Clark County, Nevada, Profile, Carson City.

State of Nevada, OCS (Office of Community Services), 1982b. Nye County, Nevada, Profile, Carson City.

Attachment 2 Generic Outline for a State/Indian Tribe General Briefing Book

- I. Brief physical description of site within State/Indian Tribe
 - A. Geologic conditions
 - B. Hydrologic conditions
 - C. Environmental setting
- II. Overview of State/Indian Tribe
 - A. Summary of State/Indian Tribe charters and treaties
 - B. Organizational charts of executive and legislative branches involved with OGR program
 - C. Discussion of authorities and responsibilities of each executive and legislative branch
 - D. Major issues of concern to State/Indian Tribe
- III. Overview of local communities within States
 - A. Maps of area
 - B. Summary of local charters
 - C. Organizational charts of local governments
 - D. Discussion of authorities and responsibilities of departments involved with OGR program
 - E. Discussion of citizen advisory groups established by local governments (e.g., planning commissions)
 - F. Social history of community
 - G. Population
 - H. Economic conditions
 - I. Community services
 - J. Transportation and utilities
 - K. Summary of local plans
 - L. Major issues of concern to communities
- IV. List of documents located in IRC pertaining to State/Indian Tribe

IRC IMPLEMENTATION SCHEDULE

WHAT		WHO	WHEN
1.	Discuss proposal at Albuquerque ISCG Meeting.	EIAB, POs, States, Indian Tribes	3/11/87
2.	Send comments on proposal, as well as suggestions for documents to be included in IRC, to EIAB.	POs, States, Indian Tribes	4/6/87
3.	Incorporate comments into proposal.	EIAB	4/27/87
4.	Begin collecting and developing filing system.	EIAB	4/27/87
5.	Draft general briefing books and send to POs, States, and Indian Tribes for comment. Discuss at ISCG Meeting.	EIAB	June ISCG Meeting
6.	Send comments on general briefing books to EIAB.	POs, States, Indian Tribes	7/13/87
7.	Incorporate comments.	EIAB	7/20/87
8.	Send briefing books and final index of documents to POs, States, and Indian Tribes. Put briefing books and index on Infolink.	EIAB	8/3/87
9.	Hold briefings on use of IRC for HQ staff.	EIAB	8/3/87-8/14/87
10.	Develop maintenance plan for IRC.	EIAB	8/14/87

NEW MEXICO RADIOACTIVE WASTE CONSULTATION ACT

1636

CHAPTER 380

AN ACT

RELATING TO RADIOACTIVE WASTE DISPOSAL; STATING A CONDITION; CREATING A TASK FORCE AND A JOINT INTERIM COMMITTEE; PRESCRIBING POWERS, DUTIES AND PROCEDURES; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.—This act may be cited as the "Radio-active Waste Consultation Act".

presently much public concern over the proposed waste isolation pilot plant. It further finds that there is a need to centralize and coordinate information on the plant and to develop recommendations for action by the state. It is the purpose of the Radioactive Waste Consultation Act to provide a vehicle for proper consideration of legitimate concerns without unnecessarily hampering the nuclear energy industry or compromising the nation's defense.

Section 3. DEFINITIONS.—As used in the Radioactive Waste Consultation Act:

- A. "committee" means the interim radioactive waste consultation committee;
- B. "disposal facility" means an engineered subterranean cavern designed primarily for the isolation of radioactive waste;
- C. "radioactive waste" means any equipment or material, except tailings or other wastes resulting from mining or milling processes, resulting from nuclear activities, which emits ionizing

radiation and has a concentration of at least one microcurie per gallon or cubic foot and for which there is no further use at the time of transport, and includes, but is not limited to:

- materials associated with the operation and decommissioning of fission reactors and the supporting fuel cycle;
- (2) spent fission fuel if it is to be discarded or stored for an extended period of time;
 - (3) fuel reprocessing wastes;
- (4) radionuclides removed from process streams or effluents; and
- (5) materials contaminated with radioisotopes including discrete radium sources; but does not include weapons grade material, radioactive waste resulting from processing weapons grade material or other radioactive material incidental to research which is under the exclusive control of the United States; and
- D. "task force" means the radioactive waste consultation task force.

Section 4. CONDITION. -- No person shall store or dispose of radioactive waste in a disposal facility until the state has concurred in the creation of the disposal facility.

Section 5. TASK FORCE. -- There is created the "radioactive waste consultation task force". The task force shall consist of the secretaries of energy and minerals and health and environment and the chief highway administrator, or their designees. The task force shall terminate on June 30, 1986 unless terminated sooner.

Section 6. DUTIES OF THE TASK FORCE .--

A. The task force or its designee shall negotiate for the state with the federal government in all areas relating to siting, licensing and operation of new federal disposal facilities, including research, development and demonstration, for high-level radioactive wastes, transuranic radioactive wastes and low-level radioactive waste. This subsection shall not be construed to limit the powers of any agency otherwise authorized to negotiate with the federal government, and if such negotiation should also come within the authority of the task force, the task force shall provide assistance to that agency but shall not limit the agency's exercise of authority. Any action taken pursuant to this subsection may be disapproved by joint resolution of the legislature.

- B. The task force may recommend legislation to implement the state's policies with respect to new federal disposal facilities.
- C. The task force shall identify impacts of new federal disposal facilities within the state and shall disseminate that information.
- D. The task force shall coordinate the investigations and studies undertaken by all state agencies and shall forward an executive summary of ongoing and recently completed investigations and studies, including information from federal or other studies, to the legislature and the governor as the studies are completed or information released.
 - E. The task force shall meet regularly with the committee

and keep the committee apprised of all actions taken by the task force.

Section 7. POWERS OF THE TASK FORCE .--

- A. The task force may make procedural rules deemed necessary to carry out the purposes of the Radioactive Waste Consultation Act.
- B. The task force may solicit and accept grants from federal or private sources for projects and undertakings that further the purposes of the Redioactive Waste Consultation Act.
- C. The task force may make such contracts as it deems necessary to carry out the purposes of the Radioactive Weste Consultation Act.
- D. The task force may appoint a representative on any federal or state-federal task forces or working groups.
- E. The task force may perform such other acts as are necessary and proper for carrying out the purposes of the Radioactive Waste Consultation Act.
- Section 8. COMMITTEE.—There is created a joint interim legislative committee which shall be known as the "radioactive waste consultation committee". The committee shall function from the date of its appointment until June 30, 1986 unless terminated sooner by the legislative council.
- Section 9. HEMBERSHIP—APPOINTMENT--VACANCIES.--The counittee shall be composed of eight members. The legislative council shall appoint four members from the house of representatives and four

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CHAP. 380

withstanding the provisions of Subsection D of Section 2-3-3 RMSA 1978. At the time of making the appointments, the legislative council shall designate the chairman and vice chairman of the committee. Members shall be appointed from each house so as to give the two major political parties in each house the same proportionate representation on the committee as prevails in each house; provided, in no event shall either of such parties have less than one member from each house on the committee. Vacancies on the committee shall be filled by the legislative council.

No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action.

Section 10. DUTIES. — After its appointment, the committee shall hold one organizational meeting to develop a work plan and budget for the period prior to January 1 preceding the first session of the thirty-fifth legislature. The work plan and budget shall be submitted to the legislative council for approval. Upon approval of the work plan and budget by the legislative council, the committee shall examine all matters relevant to the issue of radioactive waste disposal and make a recommendation regarding state consultation and concurrence, including procedures, methods and times at which the consultation and concurrence should be exercised, together with a report on the activities and expenditures of the committee, to the first session of the thirty-fifth legislature. In making the recom-

mendation, the committee shall consider the following areas:

- (1) the applicability of the Price-Anderson Act to radioactive waste transportation and radioactive waste disposal facilities:
 - (2) the transportation of radioactive waste material;
- (3) compliance with the National Environmental Policy
 Act in the creation of any radioactive waste disposal facility;
- (4) any other matter the committee deems relevant to radioactive weste disposal; and
- (5) possible procedures for effective consultation and negotiation with the federal government.

Section 11. SUBCOMMITTEES. Subcommittees shall be created only by majority vote of all members appointed to the committee and with the approval of the legislative council. A subcommittee shall be composed of at least one member from the senate and one member from the house of representatives, and at least one member of the minority party shall be a member of the subcommittee. All meetings and expenditures of a subcommittee shall be approved by the full committee in advance of such meeting or expenditure, and the approval shall be shown in the minutes of the committee.

- Section 12. INTERRELATIONSHIP WITH TASK FORCE.—The committee shall meet regularly to review the work of, and work with, the task force.
- Section 13. INTERIH REPORT.—The committee shall report to the second session of the thirty-fourth legislature on the activities

undertaken to that point.

1642

Section 14. STAFF. -- The staff for the committee shall be provided by the legislative council service.

Section 15. SAVINGS. --Nothing in the Radioactive Waste Consultation Act shall be construed to alter the obligation of the state under the April 3, 1974 agreement between the state and the atomic energy commission for the discontinuance of certain commission regulatory authority and responsibility.

Section 16. APPROPRIATION.—For the purpose of carrying out the provisions of the Radioactive Waste Consultation Act and for reimbursing the per diem and mileage expenses of the committee, there is appropriated from the general fund to the legislative council the sum of twenty-five thousand dollars (\$25,000). All or any part of this appropriation may be expended in the sixty-seventh, sixty-eighth and sixty-ninth fiscal years and any unexpended or unencumbered balance remaining at the end of the sixty-ninth fiscal year shall revert to the general fund. Payments from the appropriation shall be made upon vouchers signed by the director of the legislative council service or his authorized representative.

Section 17. EMERGENCY.—It is necessary for the public peace, health and safety that this act take effect immediately.

SOCIOECONOMICS COMMITTEE

- Description of Socioeconomic Management Plan
- O DOE letters addressing Indian Tribal socioeconomic issues
- o Description of Proposed PETT Intergovernmental Agreement

DESCRIPTION OF SOCIOECONOMICS MANAGEMENT PLAN

DRAFT SUMMARY OF THE

PROPOSED COMPREHENSIVE SOCIOECONOMIC PLAN

o Purpose

This draft paper discusses the need to develop a Comprehensive Socioeconomic Plan (CSP). During repository siting, construction, operation, closure, and decommissioning, DOE, the States, and the Indian Tribes will conduct a variety of socioeconomic studies. The purpose of the CSP is to identify the kinds of socioeconomic studies that should be completed to ensure compliance with all legislative and regulatory requirements throughout all phases of repository development and to integrate and coordinate all socioeconomic studies among DOE, the States, and Indian Tribes. The CSP will catalogue current as well as planned socioeconomic studies. The plan will-be developed and updated on a regular basis in consultation with the States and Indian Tribes.

This paper briefly discusses three general categories of socioeconomic studies that would be part of the CSP. First are those DOE socioeconomic studies required by the Nuclear Waste Policy Act (NWPA), 10 CFR 960, National Environmental Policy Act (NEPA), etc.; the second are other studies that are not required but initiated by DOE to clarify an issue or to support a required study such as Socioeconomic Monitoring and Mitigation Plans (SMMPs); and finally, studies undertaken by the States and Indian Tribes for the various purposes described in the Act and funded under the grants program.

o Required Socioeconomic Studies

According to the NWPA, 10 CFR 960, 10 CFR 60, and NEPA, DOE must conduct certain socioeconomic studies to meet these mandated requirements. For example, by the early 1990s, DOE must prepare an environmental impact statement (EIS) as required by NEPA. Socioeconomic studies must be completed for the EIS. As part of this effort, DOE will conduct baseline studies in the areas of demography, economics, facilities and services, social, government and fiscal structure. In addition to the existing baseline, DOE will make projections in such areas as employment and population levels. DOE will work in consultation with States and Indian Tribes to develop and conduct the appropriate socioeconomic studies needed to meet these requirements.

Other Socioeconomic Studies

DOE may also initiate other socioeconomic studies in addition to those required. These other socioeconomic studies, which will be developed in consultation with the States and Indian Tribes, may be undertaken in support of a required study or because of the need to gain a clearer understanding of a particular socioeconomic issue. For example, the NWPA does not explicitly require DOE to prepare an SMMP. Although Section 113(A) of the Act requires DOE "to conduct site characterization activities in a manner that minimizes any significant environmental impacts," this does not mean that DOE was obligated to demonstrate compliance through an SMMP. DOE could have chosen other ways to ensure compliance. Similarly, DOE may choose to study issues of

analysis of such issues may not be strictly required by the NWPA, 10 CFR 60, or NEPA.

o Socioeconomic Studies Undertaken by the States and Indian Tribes

Although several socioeconomic studies will be conducted by DOE, the States and Indian Tribes, funded by the grants program (Sections (116)(c)(1)(B) and 118(b)(2)(A)), can initiate their own studies. According to the Act, these studies can be undertaken for various purposes, including preparing requests for impact assistance and determining any potential econonomic, social, public health and safety, and environmental impacts of a repository on the State or reservation and its residents. For example, the States and Indian Tribes could conduct sociocultural studies in greater detail than those studies proposed by DOE.

PROPOSED COMPREHENSIVE SOCIOECONOMIC PLAN

OUTLINE

I. INTRODUCTION

- o BACKGROUND
- o PURPOSE
- O SCOPE

II. DESCRIPTION OF ACTIVITIES

- o SITE CHARACTERIZATION
- o CONSTRUCTION
- o OPERATION
- o DECOMMISSIONING

III. DESCRIPTION OF STUDIES

- o REQUIRED STUDIES
 - NWPA
 - 10 CFR 960
 - NEPA
- DISCRETIONARY STUDIES
 - SMMP
 - SPECIAL STUDIES
- o STATE AND INDIAN TRIBE STUDIES
 - IMPACT MONITORING STUDIES
 - IMPACT MITIGATION STUDIES

IV. COORDINATION OF STUDIES

- o FUNCTIONAL RELATIONSHIPS
- o TEMPORAL RELATIONSHIPS

V. INTEGRATION

- o ENVIRONMENTAL
- o ENGINEERING
- o TRANSPORTATION

VI. SUMMARY

o SCHEDULE

DOE LETTERS ADDRESSING
INDIAN TRIBAL SOCIOECONOMIC ISSUES



Department of Energy

Washington, DC 20585

FEB 1 3 1987

Mr. J. Herman Reuben, Chairman Nez Perce Tribal Executive Committee P.O. Box 305 Lapwai, Idaho 83540

Dear Mr. Reuben:

Thank you for your December 10, 1986, letter concerning the issue of the Nez Perce Tribe's eligibility for impact assistance under Section 118(b) of the Nuclear Waste Policy Act of 1982 (the Act) and your January 14, 1987, letter concerning the inclusion of Indian Tribes in all eleven elements listed in Section 117(c) of the Act. The Department of Energy has also received your December 15, 1986, letter to Secretary Herrington requesting the initiation of negotiations on the provisions of a Consultation and Cooperation (C&C) Agreement between the Nez Perce Tribe and the Department of Energy. Secretary Herrington has asked me to respond to your letters.

As Mr. John Anttonen, Assistant Manager for Commercial Nuclear Waste at the Department's Richland Operations Office, informed you by letter dated January 29, 1987, the Department has determined that "affected Indian Tribes," as defined in Section 2(2)(B) of the Act, are eligible to receive financial assistance to develop a report requesting impact assistance under Section 118(b)(2)(A)(ii) of the Act. Furthermore, if the Hanford site is finally selected and receives Nuclear Regulatory Commission authorization for constructing a repository, then the Department of the Interior designated affected Indian Tribes for the Hanford site would be eligible for financial and technical impact assistance (to address impacts of repository development) under Section 118(b)(3)(A) and (B) of the Act.

Both Secretary Herrington and I recognize the importance of the consultation and cooperation requirements of the Act. The success of the waste-management program may depend largely on the success of institutional relations as well as interactions with the public. We intend to use the extended schedule described in the Draft Mission Plan Amendment to increase our efforts in consulting with the States and affected Indian Tribes. You have raised some very important issues in the principles and attached resolutions you have submitted, and we would like to carefully explore those issues with you through the consultation and cooperation mechanism provided by the Act.

Regarding the issue of whether the eleven items listed in Section 117(c) of the Act may be included in a C&C Agreement between the Department and affected Indian Tribes, I would like to offer the following clarification. The Department considers it appropriate to negotiate on any issues of concern to the Indian Tribes in arriving at a completed C&C Agreement.

The Department looks forward to entering into C&C negotiations with the Nez Perce Indian Tribe. The Department's Richland Operations Office will be contacting the Nez Perce Indian Tribe to arrange an initial meeting. Transcripts of negotiation discussions may be made, as has been done in other C&C negotiations in which DOE has participated. The Department shares the Nez Perce Indian Tribe's goal that we reach prompt resolution of issues and complete an agreement as soon as possible.

As the Department and the Nez Perce Indian Tribe work together on this important national program, I assure you that the Department is committed to enhanced programs leading to improved institutional relations and negotiated C&C Agreements.

Sincerely,

Ben C. Rusche, Director

Office of Civilian Radioactive

Waste Management



Department of Energy

P.O. Box 550 Richland, Washington 99352

87-AMC-7

JAN 29 1987

Mr. J. Herman Reuben, Chairman Nez Perce Tribal Executive Committee P. O. Box 305 Lapwai, ID 83540

Dear Mr. Reuben:

IMPACT ASSISTANCE

The Department of Energy (DOE) has determined that "affected Indian Tribes," as defined by the Nuclear Waste Policy Act of 1982 (the Act) Section 2(2)(B), are eligible to receive financial assistance to develop a report requesting impact assistance under Section 118(b)(2)(A)(ii) of the Act. Furthermore, if the Hanford Site is finally selected as a site for construction of a repository, then the Department of the Interior designated affected Indian Tribes for the Hanford Site would be eligible for financial and technical impact assistance (to address impacts of repository development) under Section 118(b)(3)(A) and (B) of the Act.

Affected Indian Tribes are eligible to receive financial assistance during site characterization for the purpose of preparing an impact assistance report; however, as with all affected parties, financial impact assistance payments would not commence until after the initiation of construction activities at such site, in accordance with the Act. The Department realizes that affected parties are also concerned about potential adverse impacts stemming from DOE's site characterization activities. During site characterization, DOE will be conducting its activities in a manner that minimizes, to the maximum extent practicable, any significant adverse environmental impacts in accordance with Section 113(a) of the Act. Although DOE does not anticipate any significant adverse impacts as a result of site characterization activities, should adverse impacts occur during site characterization, DOE would propose to address such impacts, in consultation with affected parties, via direct technical assistance.

As DOE carries out the Congressional mandate to develop a nuclear waste repository, the Department intends to ensure that the Nez Perce Tribal interests are protected. I realize that you have written letters to both Secretary Herrington and Mr. Ben Rusche, Director of the Office of Civilian Radioactive Waste Management, in which you expressed additional concerns about DOE and Nez Perce relations. Mr. Rusche will be responding to those concerns in a separate letter to you.

If you have questions about either this letter specifically or other issues, please call me or Mr. Max Powell of my staff at (509) 376-5267. I look forward to future discussions with you about our program.

Sincerely,

John H. Anttonen, Assistant Manager for Commercial Nuclear Waste



Department of Energy

P.O. Box 550
Richland, Washington 99352

87-AMC-6

JAN 29 1987

Mr. Elwood H. Patawa, Chairman Board of Trustees Confederated Tribes of the Umatilla Indian Reservation P. O. Box 638 Pendleton, OR 97801

Dear Mr. Patawa:

IMPACT ASSISTANCE

The Department of Energy (DOE) has determined that "affected Indian Tribes," as defined by the Nuclear Waste Policy Act of 1982 (the Act) Section 2(2)(B), are eligible to receive financial assistance to develop a report requesting impact assistance under Section 118(b)(2)(A)(ii) of the Act. Furthermore, if the Hanford Site is finally selected as a site for construction of a repository, then the Department of the Interior designated affected Indian Tribes for the Hanford Site would be eligible for financial and technical impact assistance (to address impacts of repository development) under Section 118(b)(3)(A) and (B) of the Act.

Affected Indian Tribes are eligible to receive financial assistance during site characterization for the purpose of preparing an impact assistance report; however, as with all affected parties, financial impact assistance payments would not commence until after the initiation of construction activities at such site, in accordance with the Act. The Department realizes that affected parties are also concerned about potential adverse impacts stemming from DOE's site characterization activities. During site characterization, DOE will be conducting its activities in a manner that minimizes, to the maximum extent practicable, any significant adverse environmental impacts in accordance with Section 113(a) of the Act. Although DOE does not anticipate any significant adverse impacts as a result of site characterization activities, should adverse impacts occur during site characterization, DOE would propose to address such impacts, in consultation with affected parties, via direct technical assistance.

As DOE carries out the Congressional mandate to develop a nuclear waste repository, the Department intends to ensure that the interests of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) are protected. I realize that you have expressed additional concerns about DOE and CTUIR relations. The Department will be responding to those concerns in a separate letter to you.

If you have questions about either this letter specifically or other issues, please call me or Mr. Max Powell of my staff at (509) 376-5267. I look forward to future discussions with you about our program.

Sincerely,

John H. Anttonen, Assistant Manager for Commercial Nuclear Waste

DESCRIPTION OF PROPOSED PETT INTERGOVERNMENTAL AGREEMENT

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INTERGOVERNMENTAL AGREEMENT BETWEEN THE UNITED STATES DEPARIMENT OF ENERGY AND THE

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STATE	O F	

I INTRODUCTION

A. Authority and Background

In accordance with sections 116(c)(3) and 118(b)(4) of the Nuclear Waste Policy Act of 1982 (NWPA), the Department of Energy (DOE) will make payments to eligible jurisdictions during site characterization, repository development, and operation phases of the repository program in amounts equal to the amounts that eligible jurisdictions would receive were they authorized to tax site characterization activities of the Federal Government as they tax other real and personal property and industrial (or in the case of Indian Tribes, commercial) activities.

B. Purpose

and the State of ____ and ___ County for making Payments-Equal-to-Taxes (PETT) under the provisions of sections 116(c) (3) and 118(b)(4) of the NWPA.

By placing DOE in a position resembling a private sector taxpayer, the PETT program under the NWPA will enable eligible jurisdictions to receive PETT payments applicable activities and property that would otherwise not be taxable as a consequence of sovereign immunity.



II. PROGRAM ADMINISTRATION

A. Program Funding

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- 1. Real and Personal Property
 - a) The payment amount equal to the real estate tax will be determined by applying the County's established tax rate for each fiscal year of this agreement based upon the valuation for each fiscal year.

Property valuations may be provided by the County.

The Department of Energy will use the appropriate valuation as the basis for determining the amount of the PETT payment.

- of ______ or the County of _____,

 DOE will make payments equal to the applicable real estate taxes for each government's fiscal year effective after May 28, 1986.
- c) The details regarding the exchange of information and the timing of payments shall be determined through consultation between the parties to this agreement, and will be incorporated as an amendment to this agreement.
- d) Such payment, as provided for herein, shall constitute full satisfaction of any and all rights to payments under section 116(c)(3) or 118(b)(4)

of the NUIDA

2. Other Taxes

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a) Personal Property reports will be completed by DOE on or before April 15, 1987 for any and all qualifying property that would otherwise be subject to taxes.

b) (Other tax expenses to follow)

B. Billings and Payments

Anywhere, USA

1. Recipients should submit an original and three (3) copies of any information related to the amount of PETT to:

The Department of Energy

Operations Office

Street

12345

DRAFT

2.	DOE will submit a	oplicable reports or forms (Personal
	Property Reports)	in consultation with the State of
	or	County.

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3. Payments equal to Real Estate Taxes and Personal

Property Taxes will be made by wire transfer in

accordance with U.S Treasury Regulations and the

conditions specified by the State of _____ and

County of _____, or as agreed to in writing.

C. Termination or Admendments

 Termination or amendments to this agreement requires the approval of both parties of this agreement and must give 30 days notice before this agreement or modification thereto can be accomplished.

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AS WITNESS HERETO, the parties agree to have executed this agreement on the day 31st day of March 1987.

THE UNITED STATES OF AMERICA

	BY:	
ATTEST:	STATE OF:	·
	BY:	
	COUNTY OF:	
	tr.	

FINANCIAL ASSISTANCE COMMITTEE

- o Fact Sheet on OCRWM Financial Assistance Guidelines/Proposed Rulemaking
- o February 9, 1987 memorandum from R. Gale
- o Draft OCRWM Financial Assistance and Payments-Equal-to-Taxes Guidelines
- o Draft Comment Response Document
- o Draft memorandum from S. Kale to POs Delineating Grant Condition

FACT SHEET ON OCRWM FINANCIAL ASSISTANCE GUIDELINES/PROPOSED RULEMAKING

OCRWM FINANCIAL ASSISTANCE GUIDELINES/

PROPOSED RULEMAKING

Financial Assistance Guidelines

- o OCRWM is distributing, for information and comment, the latest drafts of the financial assistance guidelines, Payments-Equal-to-Taxes (PETT) guidelines and a document that responds to comments offered by the States and affected Indian Tribes on previous drafts of the financial assistance guidelines.
- o At this point, Departmental concurrence has not been received on the two guidelines.
- o Comment period for the draft guidelines noted above will extend to March 13, 1987.
- o As described below, subsequent to the receipt and consideration of comments, OCRWM will initiate the development of rulemaking related to the provision of financial assistance and PETT payments to States and affected Indian Tribes.

Financial Assistance Rulemaking

- o OCRWM has determined that codification of criteria and operating practices related to the financial assistance provisions of the Nuclear Waste Policy Act in the Code of Federal Regulations is necessary to ensure that all eligible recipients receive fair, equitable, and consistent treatment. Program-wide financial rules are also needed to assure that the Nuclear Waste Fund monies are prudently managed and that Departmental actions comport with existing statute and regulation. Issuance of the proposed rules in the Federal Register will also afford the broadest opportunity for public review and participation in the rulemaking process which is in keeping with standards established by the Administrative Procedure Act.
- o A final draft of the financial assistance guidelines and of the PETT guidelines will be issued by OCRWM to the States and affected Indian Tribes for their information and to permit them to see how the comments received up to March 13, 1987 were treated.

- O OCRWM anticipates using the final draft of the financial assistance guidelines and the PETT guidelines as the basis for its rulemaking. As soon as practicable after the issuance of such final drafts of these guidelines to the States and affected Indian Tribes, DOE will publish a Notice of Proposed Rulemaking (NPRM) in the Federal Register.
- o OCRWM intends to use the provisions in the proposed rule on an interim basis pending finalization of the rulemaking.
- o The rulemaking will be program-wide and will not be limited solely to the Geologic Repository program.
- o The rulemaking will address grants, cooperative agreements and Payments-Equal-to-Taxes (PETT) payments which are the categories of financial assistance provided for by the Nuclear Waste Policy Act. OCRWM also recognizes that some sections of the rulemaking may have to be reserved pending further development.
- o Subsequent to the receipt and consideration of comments, OCRWM will issue a final rule in the Federal Register.
- o The proposed schedule for the rulemaking process is as follows:
 - Issue NPRM -- April 1987
 - 90 day public comment period -- comment period ends July 1987
 - Issue Final Rulemaking -- October 1987

FEBRUARY 9, 1987 MEMORANDUM FROM R. GALE



Department of Energy

Washington, DC 20585

FEB 9 1987

Dear Recipient:

Attached for your information and review are the following:

- Draft Office of Civilian Radioactive Waste (OCRWM) Management Financial Assistance Guidelines;
- 2) Draft OCRWM Payments-Equal-to-Taxes Guidelines;
- 3) Draft Summary Comment Response Document on OCRWM and Office of Geologic Repository Draft Financial Assistance Guidelines; and
- 4) Fact sheet on proposed OCRWM activities related to the Financial Assistance Guidelines/Rulemaking.

OCRWM is transmitting the draft documents noted above to the States and affected Indian Tribes for their review and comment. The comment period closes March 13, 1987. Subsequent to the receipt and consideration of comments, OCRWM intends to initiate a rulemaking on this subject. The proposed schedule for the rulemaking is as follows:

- 1) Issue Notice of Proposed Rulemaking -- April 1987
- 2) Public comment period closes -- July 1987

3) Issue final Rule -- October 1987

Should you have any questions concerning this issue, please contact Charles Smith of my staff. He may be reached on (202) 586-2280.

Sincerely,

Roger W. Gale, Director

Office of Policy and Outreach Office of Civilian Radioactive

Waste Management

Attachments: As noted

OCRWM FINANCIAL ASSISTANCE AND PAYMENTS-EQUAL-TO-TAXES GUIDELINES

OCRWM DRAFT FINANCIAL ASSISTANCE AND PAYMENTS-EQUAL-TO-TAXES GUIDELINES

February 1987

OCRWM DRAFT FINANCIAL ASSISTANCE AND PAYMENTS-EQUAL-TO-TAXES GUIDELINES

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OCRUM DRAFT FINANCIAL ASSISTANCE

AND

PAYMENTS-EQUAL-TO-TAXES

GUIDELINES

I. PURPOSE AND SCOPE

The purpose of these guidelines is to provide program-wide general policies and procedures for the award and administration of financial assistance and Payment-Equal-To-Taxes (PETT) payments authorized by the Nuclear Waste Policy Act of 1982 (NWPA, Pub. L. 97-425, 42 U.S.C. 10101 et seq.) as implemented by the U.S. Department of Energy (DOE), Office of Civilian Radioactive Waste Management (OCRWM). While these guidelines apply principally to NWPA-related financial assistance and PETT payments, they also address other financial assistance instruments, such as cooperative agreements, provided under the NWPA. The Guidelines apply only to those financial assistance and PETT payment provisions currently authorized by the NWPA and do not address other financial assistance and PETT payment provisions that may be authorized by Congress regarding either the repository or the Monitored Retrievable Storage (MRS) program.

Pending completion of a rulemaking on this subject, these guidelines shall serve as OCRWM's operating procedures regarding financial assistance and PETT payments authorized by the NWPA.

The NWPA authorizes OCRWM to provide financial assistance (grants) and to make payments to States, affected Indian Tribes, and units of general local governments for a number of distinct purposes. As provided by the NWPA, these grants and payments are to:

- enable eligible recipients to participate in program activities
 (participation grants);
- 2) mitigate the impact to recipients resulting from development of a facility (mitigation assistance); and
- 3) compensate recipients for revenues not received due to the sovereign immunity of the Federal Government (PETT).

The NWPA contains provisions for financial assistance and PETT payments to the above eligible recipients in a number of programmatic areas - the Geologic Repository Program, the Test and Evaluation Facility (TEF), the Federal Interim Storage (FIS), and the MRS Program. In addition, with regard to the transportation program, the provision of financial assistance through the Office of Geologic Repository Financial Assistance Program to host States, affected Indian Tribes, and units of general local government within the host state is contemplated.

These guidelines identify the eligible recipients and program activities that are eligible for funding under the grant and payment provisions of the NWPA, and describe the nature and purpose of grants and payments available to the eligible recipients.

These guidelines apply to:

- 1) new grants;
- 2) the modification, renewal, or continuation of existing grants;
- 3) payments made pursuant to the NWPA; and
- 4) cooperative agreements entered into by OCRWM.

Table 1, summary of OCRWM financial assistance, identifies the OCRWM Program, the type of financial assistance and recipient, and the statutory authority for providing the financial assistance.

TABLE 1 SUMMARY OF OCRUM FINANCIAL ASSISTANCE

(PROGRAM AREA	TYPE OF FINANCIAL ASSISTANCE	RECIPIENT	NHPA STATUTORY AUTHORITY
1.	Geologic Repository			
	PROGRAM PHASE a) Notification/Numination	Participation Grants	States/Affected Indian Tribes	Section 116(c)(1)(A) Section 118(b)(1)
	b) Characterization	Participation Grants/ Payments-Equal-To-Taxes	States/Affected Indian Tribes/ Units of General Local Government	Section 116(c)(1)(A)&(B) Section 116(c)(3) Section 118(b)(1)&(2) Section 118(b)(4)
	c) Licensing	Participation Grants/ Payments-Equal-To-Taxes	States/Affected Indian Tribes/ Units of General Local Government	Section 116(c)(1)(A)&(B) Section 116(c)(3) Section 118(b)(1)&(2) Section 118(b)(4)
	d) Construction and Operation	Participation Grants/ Impact Hitigation Assistance/Payments-Equal-To- Taxes	States/Affected Indian Tribes/ Units of General Local Government	Section 116(c)(1)(A)&(B) Section 116(c)(3) Section 118(b)(1)&(2) Section 118(b)(3)(A) Section 118(b)(4)
	e) Decommissioning	Participation Grants/ Impact Hitigation Assistance/Payments-Equal-To- Taxes	States/Affected Indian Tribes/ Units of General Local Government	Section 116(c)(1)(A)&(B) Section 116(c)(3) Section 118(b)(1)&(2) Section 118(b)(3)(A) Section 118(b)(4)
2.	Federal Interim Storage	Impact Assistance Payments	States/Units of Local Government	Section 136(e)
3.	Test and Evaluation Facility	Participation Payments	States/Affected Indian Tribes	Section 219(a)
4.	Transportation	Cooperative Agreements	Regional Organizations	Section 302(d)
5.	Monitored Retrievable Storage	Impact Aid Payments	Affected Indian Tribes/Units of General Local Government	Section 141(f)&(h)

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II. POLICY

The policy of OCRWM in providing financial assistance and/or PETT payments to eligible recipients is to:

- A) Comply with the NWPA and DOE's Financial Assistance Rules as specified in the "Authorities" section;
- B) Recognize the responsibility of ensuring that eligible recipients receive an appropriate level of funding in order that they may participate in the program;
- C) Ensure consistency in the implementation of the financial assistance and PETT payment provisions of the NWPA;
- D) Be cognizant of the need to be sensitive to the eligible recipients' individual needs and differences;
- E) Treat fairly all recipients during the application, award, administration, and closeout of such financial assistance instruments;
- F) Incorporate a high degree of fiscal responsibility in the payment, award, and administration of grants and payments to eligible recipients;
- G) Ensure that the Federal Government's appropriations process and decisions resulting from it are fully considered in the award and administration of grants;
- H) Develop and maintain a system for the award of grants that recognizes the needs of the recipients consistent with the objectives of the NWPA;

- I) Request, on an annual basis, that potential recipients identify their projected financial assistance requirements for 3-year periods to permit OCRWM to evaluate such requirements and identify recommended funding levels in the development of the proposed OCRWM budget, DOE budget submissions to the Office of Management and Budget (OMB) and Congress; and
- J) Process grant and payment requests as expeditiously as possible to facilitate participation in the radioactive waste management program by eligible recipients.

III. AUTHORITIES

The authorities for providing financial assistance and/or PETT payments, and the administration thereof to States, affected Indian Tribes and units of general local government, are as follows:

- A) The Nuclear Waste Policy Act of 1982 (Pub. L. 97-425, 42 U.S.C. 10101 et seq.);
- B) Department of Energy Financial Assistance Rules (10 CFR Part 600).
- C) Department of Energy Organization Act (Pub. L. 95-91, 42 U.S.C. 7101 et seq.); and
- D) OMB Circular A-87, "Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments."

IV. DEFINITIONS

A. FOR PURPOSES OF THESE GUIDELINES:

1) Grant

The term "grant" means a legal instrument which defines the relationship between the Government and a recipient for the transfer of money, property, services or anything of value to the recipient for the accomplishment of a public purpose of support or stimulation authorized by law. A grant presumes no substantial involvement between DOE and the recipient in the conduct of grant activities.

2) Payments-Equal-To-Taxes (PETT) Payments

RESERVED

3) Cooperative Agreement

The term "cooperative agreement" means a legal instrument which defines the relationship between the Government and a recipient for the transfer of money, property, services, or anything of value to the recipient for the accomplishment of a public purpose of support or stimulation authorized by law. A cooperative agreement presumes a substantial amount of involvement between DOE and the recipient during the performance of the contemplated activity.

4) Affected Indian Tribe

Affected Indian Tribe means any Indian Tribes (a) within whose reservation boundaries a Monitored Retrievable Storage (MRS) facility, test and evaluation facility (TEF), or a repository is proposed to be located or (b) whose federally defined possessory or usage rights to other lands outside the reservation boundaries, arising out of congressionally ratified treaties, may be substantially and adversely affected by the locating of such a facility, provided that the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the Tribe, that such effects are both substantial and adverse to the Tribe.

5) States

States means those States either having been formally notified by the Secretary as having a potentially acceptable repository site; having a site authorized for characterization; or having a site authorized for repository construction. In addition, States means those States within whose jurisdictional boundaries an MRS facility if approved by Congress, is sited; Federal interim storage capacity is established and operated; or having potential sites for a TEF.

6) Units of Local Government

Units of Local Government means those local governments, as defined in section 2(28) of the NWPA, within whose boundaries a repository, MRS facility, or TEF may be constructed, or Federal interim storage capacity is established and operated.

B. ELIGIBLE RECIPIENTS OF FINANCIAL ASSISTANCE, PETT PAYMENTS, AND COOPERATIVE AGREEMENTS

Recipients of financial assistance, PETT payments, and cooperative agreements provided pursuant to the provisions of the NWPA are the following:

- 1) Affected Indian Tribes;
- 2) States;
- 3) Units of general local government; and
- 4) National and/or regional organizations that submit proposals which comport to the requirements set forth in the Federal Procurement Regulations (41 CFR Chapter 9); DOE Procurement Regulations (10 CFR Part 600); and the Federal Assistance Regulations (DOE Federal Assistance Manual).

V. ADMINISTRATION

A. DOE RESPONSIBILITIES

Within DOE, the responsibility for the development of
Department-wide policies related to financial assistance
resides within the Office of the Assistant Secretary for
Management and Administration (MA). The Assistant Secretary
for MA promulgates implementing regulations, policies and
procedures that provide general guidance in the application,
award, and administration of financial assistance
instruments. The Director, OCRWM has programmatic
responsibility for the implementation of the financial
assistance and PETT payment provisions of the NWPA consistent
with the Federal and Department-wide financial assistance
regulations and policies.

B. OCRWM-WIDE RESPONSIBILITIES

Both OCRWM Headquarters and Project Offices have responsibilities in the management and administration of grants and PETT payments. In general OCRWM Headquarters has the responsibility to: (1) develop policy and issue guidance; (2) review and concur on grant applications;

(3) review DOE Project Office monitoring activities; and (4) assure involvement and concurrence of all OCRWM program

elements. DOE Order 4600.1 outlines the responsibilities of DOE officials involved in the financial assistance process.

With regard to NWPA grants and/or PETT payments, the following DOE officials have responsibilities as delineated.

- 1) Senior Procurement Official (Director, Procurement and Assistance Management Directorate): responsible for ensuring the overall quality and effectiveness of the procurement and financial assistance functions within DOE.
- 2) Contracting Officer DOB official authorized to execute awards on behalf of DOB and who is responsible for the business management non-program aspects of the financial assistance process.
- 3) Headquarters Program Official (Director, OCRWM):
 responsible for: 1) Directing and approving the
 development and implementation of program specific
 financial assistance and PETT payment guidelines
 and/or regulations; 2) determining other major
 programmatic facets of financial assistance afforts;
 and 3) overseeing the OCRWM financial assistance and
 PETT program.
- 4) Program Manager (Associate Directors of OCRWM Program
 Offices): responsible for the oversight of:

 1) development and implementation of program

guidelines; 2) supervising the evaluation of applications; 3) development of recommendations for ranking and selection; and 4) concurrence in all grant awards.

- Offices): responsible for 1) grant application review;

 2) recommendations to Headquarters (HQ) as a result of this review; 3) resolution of issues with HQ and grant recipients; 4) provisions of programmatic guidance regarding grant negotiations; 5) recommendation of negotiated award to HQ; and 6) monitoring and administering programmatic aspects of the grant.
- 6) Associate Director of Office of Resource Management,

 OCRWM: responsible for 1) ensuring that appropriate

 financial regulations and procedures are utilized in the

 issuance and administration of financial assistance; and

 2) chairing the OCRWM Financial Assistance Review Board.
- 7) Director of Office of Policy and Outreach:

 responsible for 1) development of OCRWM Financial

 Assistance Guidlelines and/or regulations; 2) directing
 the development of policies regarding cooperative
 agreements for national and/or regional organizations; and
 administering cooperative agreements awarded to national
 and/or regional organizations.

8) OCRWM Financial Assistance Review Board

The OCRWM Executive Committee, sitting as the OCRWM
Financial Assistance Review Board, consists of the OCRWM
Associate Directors and the Director of the Office of
Policy and Outreach. Depending on the issues to be
considered, representatives from other DOE offices may be
asked to participate. These may include, but are not
limited to, the Offices of General Counsel, Management and
Administration, and Congressional, Intergovernmental and
Public Affairs. The OCRWM Financial Assistance Review
Board is chaired by the Associate Director for Resource
Management.

The functions of the Financial Assistance Review Board are to:

Review grant applications and other financial assistance issues referred to it by the cognizant Associate Director in those instances where the terms of the proposed grant (recipient, scope, or dollar amount) represent a departure from the OCRWM financial assistance guidelines, or where new policy or legal issues are involved. The Financial Assistance Review Board, in those instances, recommends appropriate action to the Director, OCRWM. Notification to affected Indian Tribes and States will be made if this action is taken, including a description of the recommendations of the Financial Assistance Review Board.

o Perform an annual program review of the financial assistance process within OCRWM. The purpose of the review is to assess the performance of the OCRWM financial assistance process, review the adequacy of the financial assistance guidelines and/or regulations, and make recommendations to the Director of OCRWM for improvements, as appropriate.

C. ALLOWABLE AND UNALLOWABLE COSTS

In general, allowable costs under NWPA financial assistance program shall be those costs that are allocable to an approved activity or purpose authorized under the NWPA. 10 CFR 600.103 and OMB Circular A-87, Cost Principles for State and Local Governments, shall be used to determine the allowability of costs for States, affected Indian Tribes, and local governments. It is also noted that, pursuant to sections 116 and 118 of the NWPA, any ordinarily incurred salary or travel expenses shall be unallowable. 1

The allowability of costs for NWPA funds spent by contractors for the grantees shall be determined by the cost principles applicable to the contractor; i.e., OMB Circular A-122 shall be used for nonprofit organizations; 48 CFR Part 31.2 shall be used for commercial organizations, partnerships, and sole proprietorships; OMB Circular A-21 for educational institutions; etc. The Act specifies that "any salary or travel expense that would ordinarily be incurred" is not eligible for funding under sections 116(c)(1) or 118(b). This means that DOE may finance only travel and salary expenses incurred by the grantee as a direct result of participation in repository program activities of the DOE under that Act. Salary and travel-related expenses of State or Indian Tribal employees working full— or part-time on waste disposal activities, consultants, and other providers of contract services are potentially fundable.

D. REPORTS

Performance and Financial Status Reports shall be submitted by the grantee to the DOE CO in accordance with the provisions of 10 CFR 600.115 and 10 CFR 600.116.

E. DISBURSEMENT OF GRANT FUNDS

Disbursement of grant funds to the grantee shall be made in accordance with the provisions of 10 CFR 600.112 and 10 CFR 600.116.

F. AUDITS AND MONITORING

Audits of grants to States, affected Indian Tribes, and local governments shall be conducted pursuant to 10 CFR Part 600, Subpart D, Audits of State and Local Governments.

G. REVIEW

OCRWM, in response to the need to periodically review the overall financial assistance program and, in some instances, specific grant requests, has developed a Financial Assistance Review Board to oversee the financial assistance program.

H. PROCEDURES FOR GRANT NEGOTIATIONS

In general, the procedures discussed below apply to geologic repository grants under sections 116 and 118, to Federal Interim Storage assistance under section 136, and to Test and Evaluation Facility payments under section 219. Should the

MRS Program be authorized by Congress, then DOE will separately specify the grant negotiation procedures under section 141. Negotiation procedures related to PETT payments and for MRS, FIS, and TEF will be developed in consultation with the affected parties and will be issued as an amendment to these guidelines.

1) Grant Application, Review, Negotiation, Concurrence, and
Award Process

DOE Project Offices have the primary responsibility and authority, utilizing guidance provided by OCRWM HQ, to review grant applications for conformance with DOE requirements, and to negotiate any required changes with the grant applicant.

DOE requirements include, but are not limited to: these

Financial Assistance and Payments-Equal-to Taxes (PETT)

Guidelines; DOE's Financial Assistance Rules, 10 CFR Part

600, which establish minimum administrative requirements applicable to all grantees; and OMB's Circular A-37,

"Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally Recognized Indian Tribal Governments."

- a) Application Review:
- o A Project Office (PO) shall review grant applications
 for conformance to DOE's Financial Assistance Rules, 10

CFR Part 600, which establishes application, funding, and administrative requirements applicable to all grantees;

- o PO's shall review grant applications for conformance to OCRWM program technical evaluation requirements.
- b) Negotiation of Grant Application:
- o DOE Contracting Officer (CO) and DOE Project Manager are responsible for conducting grant negotiations;
- o Initial contact for issue negotiation/resolution will be with the cognizant DOE PO;
- o DOE shall attempt informally to resolve any outstanding grant issues;
- o During this stage the DOE position should be considered tentative pending internal review, concurrence and approval.
- c) Award stage:
- o After obtaining HQ review and concurrence, the DOE CO will sign the grant award and send it to the applicant, who shall be required to return a signed copy of the award acknowledging acceptance;

- o Grants will be awarded by CO's, following HQ concurrence, for all approved activities on which resolution has been achieved;
- o If DOE does not award the full amount of the requested grant, the award notification will state the rationale;
- o A DOE CO will contact in writing the grant recipient and offer to continue to negotiate on those issues still unresolved;
- o DOE will act expeditiously on grant applications, and attempt to complete action within 90 days of receipt of the application.

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d) Appeal (Pre-Award):

A State or affected Indian Tribe may appeal an unfavorable determination with respect to a grant application and award in the following sequence:

- o The initial appeal is to be made to the appropriate DOE PO manager.
- o If not resolved, the appeal may next be made to the cognizant OCRWM Associate Director (e.g., the Associate Director for OGR).
- o If necessary, the appeal will then be submitted to the Director of OCRWM for resolution.

2) Grant Administration

- o In accordance with DOE Financial Assistance Rules (10 CFR Part 600.26), a grantee may appeal some disputes that arise during the term of the grant;
- o Such appeal is made to the DOE Financial Assistance
 Appeals Board, in accordance with procedures set forth
 in 10 CFR Part 1024;
- o The decision by the Board constitutes the final decision of the Department.

3) Special Conditions of Grant Award

In some cases, based upon the past or present performance of the grantes, consideration may be given to utilizing special conditions prior to the issuance of a grant award. All special conditions require a determination by a Contracting Officer. Some examples of special conditions follow:

- The applicant has failed to provide a sufficiently detailed project description for DOE to determine the relevance of the proposed activity to the grant project and the reasonableness of the proposed cost. A condition may require the submission of additional information prior to initiation of the activity. No grant applications will be approved if a determination cannot be made that costs are reasonable and activities are fundable:
- The applicant has failed to comply with the reporting requirements. Under the provisions of 10 CFR 600.121, notification shall be provided to the grantee that, under the provisions of 10 CFR 600.112(B), payments may be withheld. The notification will advise the grantee of the proposed action and of required corrective actions to be taken by the grantee;
- o The applicant proposes contracting for some services but has an inadequate procurement system or has not utilized the procurement system. A condition may require the

request for proposal (RFP) along with proposed solicitation procedures be submitted to DOE prior to release by the grantee.

I. EVALUATION CRITERIA

The following criteria provide a broad framework that OCRWM will consider in evaluating applications for the financial assistance provided for by the NWPA. Additional technical criteria will be specified in guidelines for specific program areas. Grant applications shall contain a detailed description of activities planned by the potential recipient for the term of the grant and a budget that details the costs of conducting those activities. To facilitate submittal and review of grant applications, OCRWM will suggest the use of standard grant application formats.

In general, the application shall state and justify the following:

- The relevance of the stated objectives to the intent of the NWPA;
- The appropriateness and timeliness of the proposed method or approach;
- The appropriateness and adequacy of the proposed budgets;

J. PHASE-DOWN/DISCONTINUATION OF FUNDING

1) General

Sections 116(c)(3) and (4), 118(b)(4) and (5), and 219(a) specify criteria for the termination of grants under certain conditions. These criteria relate primarily to the termination, closeout, or completion of activities associated with the waste management facilities. End points, such as the termination of site characterization for a site no longer being considered to host a waste facility, or the conclusion of development, construction and operation of a facility, will initiate the phasing down, closeout, or termination of grant funding.

2) Phase-Down Funding

a) Office of Geologic Repositories (OGR)

States and affected Indian Tribes that have been notified under section 112 of the NWPA that they have been nominated, but not recommended, for site characterization should phase down their funding requests to a level commensurate with their appropriate continued participation in the program. Specific allowable activities that may be funded will be considered on a case-by-case basis. Allowable activities include:

- o Review and Comment Activities in this category should focus on reviewing and providing comments on program-related documents and plans;
- o <u>Attendance at Meetings and Workshops</u> related to the Repository Program;
- o <u>Public Information</u> Activities in this category should focus on disseminating program-related information to the public; and
- o Intergovernmental Coordination Activities in this category should focus on coordination with interested State agencies, the legislature, local governments, affected Indian Tribes, and other appropriate Federal, State, and Indian Tribal government entities.

The two sites nominated, but not recommended, for site characterization for the first repository cannot be considered for the second repository. However, they may still be considered for the first repository if DOE determines that an additional site needs to be characterized. Until it is determined that it is unnecessary to characterize one or both of these sites, limited phase-down funding as described above will be provided. If such a site does undergo site characterization, characterization funding will be provided.

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- b) MRS
 (RESERVED)
- c) TEF
 (RESERVED)
- d) FIS (RESERVED)

3) Phase-Out Funding

a) OGR

Sections 116(c)(4) and 118(b)(5) of the NWPA specify criteria for termination of grants under certain circumstances. These criteria refer primarily to termination of site characterization activities by DOE, failure by Congress to override a notice of disapproval by a State or affected Indian Tribe, or inability to obtain necessary authorization from the NRC. However, a number of sites will be dropped from consideration for a repository long before the termination conditions provided in the NWPA are reached. When it is determined that a site is eliminated from any further consideration for selection for a repository, phasing out of funding will be initiated. Each grant should contain terms that specify how funding will be terminated, so as to ensure that grants are phased out on sites that are eliminated during each phase.

- b) MRS
 - (RESERVED)
- c) TEF

(RESERVED)

d) FIS

(RESERVED)

VI. GEOLOGIC REPOSITORY PROGRAM

A. INTRODUCTION

Subsections A through C of this section apply specifically to the Office of Geologic Repositories (OGR) program.

These guidelines focus on financial assistance (grants) available to eligible recipients during the notification/nomination and characterization phases of the Geologic Repositories program.

Additional guidelines for other phases of the program, including licensing, construction, operation, and decommissioning, will be considered at a later date. There should be no lapse in funding as States and affected Indian Tribes progress from one phase in the program to the next.

The phases, in chronological order, are:

1) Notification/Nomination

Notification refers to the program phase during which States and affected Indian Tribes have been notified under section 116(a) or 118 (a) of the Act that they have a potentially acceptable site (or sites) for a repository. The notification/nomination phase extends until approval by the President of those sites nominated

and recommended for site characterization. Sections 116(c)(1)(A) and 118(b)(1) of the Act provide for grants to States and affected Indian Tribes during notification/nomination.

2) Characterization

Site characterization is the program phase during which States and Indian Tribes with recommended candidate sites have been approved for site characterization by the President. Sections 116(c) and 118(b) of the Act specify the activities for which States and affected Indian Tribes may receive grants from DOE during characterization.

- 3) <u>Licensing</u>
 RESERVED
- 4) <u>Construction</u>
 RESERVED
- 5) Operation
 RESERVED

6) Decommissioning (RESERVED)

B. FUNDABLE ACTIVITIES

1) General

Grant applications are to contain a detailed description of activities proposed by the eligible recipient for the term of the grant and a budget that details the costs of conducting the proposed activities. The proposed activities must comport to the fundable activities noted in sections VI.B.2 and VI.B.3.

2) Notification/Nomination

Activities that may be funded during the notification/nomination phase are specified in sections 116(c)(1)(A) and 118(b)(1) of the Act. The grants shall be made for the purpose of participating in activities required by sections 116, 117, 118 or authorized by written agreement entered into pursuant to section 117(c). This provision covers a broad range of activities that may be eligible for funding. Activities funded should be designed to achieve the goal of maximizing State and affected Indian Tribe involvement in the overall repository development program and enabling States and affected Indian Tribes to participate effectively in the development of binding written Consultation and Cooperation (C & C) Agreements.

Transportation, defense waste, and MRS activities that impact the repository program may also be funded.

Examples of fundable activities that may be conducted during the notification/nomination phase include:

- a) Activities Leading to C&C Agreements DOE is required to begin negotiations on the C&C Agreements within 60 days after (1) a candidate site has been approved for characterization by the President, or (2) receipt of a written request by a State or affected Indian Tribe notified under Section 116(a), whichever occurs first. A State or affected Indian Tribe may wish to gather information, develop draft provisions, orient and train staff for the negotiation of C&C Agreements, and conduct C&C negotiations.
- b) Review and Comment Activities in this category should focus on reviewing and providing comment to DOE on the plans, reports, proposed rules, or portions thereof, that are relevant to repository development activities within the State or affected Indian Tribal area. Examples of such items include:
 - Siting Guidelines and modifications thereto;
 - Mission Plan;
 - Environmental Assessments;

- Site Characterization Plan preparation material;
- Geologic/hydrologic evaluation reports;
- Repository engineering reports;
- Socioeconomic and environmental reports;
- Transportation reports (those portions related only to the repository program);
- Defense-waste reports (those portions related only to the repository program); and
- MRS reports (those portions related only to the repository program).
- c) Attendance at Meetings and Workshops related to the repository program.
- d) Public Information Activities in this category should focus on grantee programs to disseminate information to groups within the State or affected Indian Tribal area and respond to questions from individuals or groups within the State or affected Indian Tribal area. DOE may provide parallel services to the public and will endeavor to coordinate public information activities with the grantee. Examples of such activities include:
 - Development of publication materials;
 - Dissemination of program information;
 - Operation of public information offices; and
 - Conducting of public information meetings.

- e) Intergovernmental Coordination These activities should enable grantees to coordinate with interested State agencies, the legislature, local government, affected Indian Tribes, and other appropriate Federal, State, and Indian Tribal government entities. The grantee should assume responsibility for soliciting views of such groups and keeping them informed of State and affected Indian Tribe activities. Example of such activities include:
 - Provision of information to officials;
 - Site visits;
 - Participation in and attendance at information meetings related to the repository program; and
 - Attendance at project-related meetings.
- f) Monitoring, Analyses, and Studies Activities in this category should focus on the analyses and studies necessary to provide appropriate monitoring and analysis of DOE activities. Examples of such monitoring, analyses, and studies include:

- Independent analyses of DOE procedures, analyses, and programs;
- Participation in technical review of DOE programs; and
- Participation in development of DOE technical work plans.

Data collection and independent studies may be funded if the State or affected Indian Tribe justifies such studies as essential to the development by the State or affected Indian Tribe of an informed statement of reasons supporting their disapproval of a recommended site under section 116(b) or 118(a) of the NWPA. A State or affected Indian Tribe must demonstrate that the conclusions reached as a result of the proposed activities could contribute to a State or affected Indian Tribe conclusion that the site is unacceptable and that such demonstration is dependent upon the data to be generated by the proposed activities. In addition, these activities

- be reasonable, i.e., scientifically justifiable.

(Recognized study or test methods are to be employed and the methods are capable of yielding the expected data or results.);

- be performed by demonstrably competent contractors.
 (e.g., the proposed contractors have adequate experience in the field.);
- not unreasonably interfere with or delay DOE's own activities; and
- be conducted as an oversight function. (e.g., the grantee is aware of DOE's activities or plans for activities in the particular area of study and funding is to address concerns regarding those activities and plans.).

The State or affected Indian Tribe must also demonstrate that the contribution of such studies to the informed statement of reasons depends on the studies being initiated prior to site characterization. The State or affected Indian Tribe must show that unless the studies are initiated prior to site characterization, the results of those studies will not be available for consideration by the State or affected Indian Tribe at the time it must formulate its informed statement of reasons of disapproval.

3) Characterization

Sections 116(c) and 118(b) of the Act specify the activities for which States and affected Indian Tribes may receive grants from DOE during characterization.

Grants shall be made to States and affected Indian Tribes where "a candidate site for a repository is approved under section 112(c)." The provisions of the NWPA pertaining to the site characterization phase include developing the capability to monitor, test, and evaluate DOE activities with respect to such site;

understand the technical aspects of the program and its implications with respect to such site; and evaluate potential impacts of the repository program with respect to such site.

Review of transportation, defense waste, and MRS activities related to the repository program with respect to such site may also be funded.

In addition, no grant funds may be used by a recipient to provide funds to any State, affected Indian Tribe, or unit of general local government (as those terms are defined in the NWPA) or to any private interest group, unless: 1) the funds are provided pursuant to a written contract; 2) the Department of Energy is provided with a copy of such contract; and 3) the grant specifically identifies such State, Indian Tribe, unit of general local government or public interest group as the recipient of such contract; and 4) the activities to be funded are for the direct benefit and use of the repository host state grantee and not to the non-host state, affected Indian Tribe, unit of general local government, or private interest group.

Examples of fundable activities that may be conducted during the site characterization phase include the following:

- Review Activities Activities in this category with respect to such site should focus on reviewing any potential economic, social, public health and safety, and environmental impacts of such repository on the States, affected Indian Tribes, and their residents. Examples of such activities include:
 - Review of documents such as DOE Site Characterization

 Plans (SCP), prepared by or for DOE, Nuclear Regulatory

 Commission (NRC), and Environmental Protection Agency

 (EPA):
 - Review of Monitoring and Mitigation (M & M) Plans;
 - Testing of DOE computer models;
 - Review of Quality Assurance audits;
 - Review of defense waste reports (those portions related only to the repository program);
 - Review of MRS reports (those portions related only to the repository program); and
 - Review of transportation reports (those portions related only to the repository program).
- b) Impact Assistance Request Financial assistance for the development of a request for impact assistance under later phases of the financial assistance program is authorized under sections 116(c)(2) and 118(b)(3).

Such impact assistance shall be designed to mitigate the impact of the development of a repository, following the initiation of construction activities. In order to receive impact assistance, a State or affected Indian Tribe must prepare and submit "...a report on any economic, social, public health and safety, and environmental impacts that are likely as a result of the development of a repository at a site. . . " This report shall be submitted to the Secretary following the completion of site characterization activities at the site and before the recommendation of such site to the President by the Secretary for application for a construction authorization for a repository. Examples of activities under this category include:

- Preparation of a draft impact report including evaluation of baseline and project-related activities and effects;
- Establishment of a framework for local government and public participation in the development of the impact mitigation report (e.g., establishment of working groups that would include local citizens, officials, and interest group representatives); and
- Training for negotiation of binding written agreements concerning impact assistance.
- c) Monitoring, Testing, or Evaluation Activities in this

category should focus on conducting relevant independent monitoring, testing, or evaluation of site characterization programs with regard to the particular site. Examples of such activities include:

- Monitoring of field activities by on-site observers;
- Periodic inspections of DOE operations at the site;
- Monitoring and assessment of DOE air or water quality monitoring installations;
- Monitoring of cultural and environmental information gathering;
- Monitoring of effects of site characterization activities;
- Independent laboratory tests of DOE-provided samples; and
- Other relevant data collection activities.

Data collection and independent studies may be funded if such studies are:

- reasonable, i.e., scientifically justifiable (e.g., recognized study or test methods are to be employed and the methods are capable of yielding the expected data or results);
- performed by demonstrably competent contractors (e.g., the proposed contractors must have adequate experience in the field);
- not likely to unreasonably interfere with or delay DOE's own activities; and
- conducted as an oversight function (i.e., the grantee is aware of DOE's activities or plans for activities in the particular area of study, and funding is requested to address concerns regarding those activities and plans).

d) Public Information Programs - Activities in this category should focus on grantee programs providing information to its residents regarding activities related to the nuclear waste program with respect to a site being characterized.

Examples of such activities include:

- Development of publication materials;
- Dissemination of program information;
- Operation of public information offices; and
- Conducting public information meetings and hearings.

e) Intergovernmental Coordination and Comments on Activities

Intergovernmental Coordination

These activities should enable grantees to coordinate with interested State agencies, the legislature, local governments, affected Indian Tribes, and other appropriate Federal, State, Indian Tribe, and local government entities. The grantee should assume responsibility for soliciting views of such groups and keeping them informed of State and affected Indian Tribe activities. Examples of such activities include:

- Provision of information to officials;
- Site visits;
- Participation in and attendance at information meetings related to the repository program; and
- Attendance at project-related meetings.

Activities leading to C & C Agreements - DOE is required within 60 days of approval of a candidate site for characterization to initiate negotiations toward a C & C Agreement. A State or affected Indian Tribe may use grant funds to gather information, develop draft provisions, orient and train staff for the negotiation of a C&C Agreement, and conduct C & C negotiations.

Comments on Activities

States and affected Indian Tribes may provide comments to DOE on site characterization activities. Examples of such activities include:

- Commenting on documents prepared by or for DOE, NRC, and EPA such as DOE Site Characterization Plans;
- Commenting on Monitoring and Mitigation (M&M) Plans;
- Testing of DOE computer models;
- Commenting on Quality Assurance audits;
- Commenting on defense waste reports (those portions related only to the repository program);
- Commenting on MRS reports (those portions related only to the repository program); and
- Commenting on transportation reports (those portions related only to the repository program).

C. OGR Grant Application Technical Evaluation Criteria

An application for funding should be evaluated to determine whether:

- 1. Funding requests are consistent with the NWPA and OCRWM financial assistance policy.
- 2. Proposed activities involving data collection and independent studies are reasonable, i.e., scientifically justifiable (e.g., recognized study of test methods are employed and the methods are capable of yielding valid data or results).

- 3. Proposed activities are performed by demonstrably competent contractors (e.g., the proposed contractors have adequate experience in the field, including an adequate quality assurance program to ensure that the data are reliable).
- 4. The proposed activities and schedule are not likely to unreasonably interfere with or delay DOE-planned tests/activities, e.g., DOE Milestones.
- 5. The proposed activities are conducted as an oversight function.
- 6. The proposed budget is reasonable and sufficiently detailed for appropriate evaluation.
- 7. Sufficient information is provided to determine the purposes of the tasks proposed in the grant application and the adequacy of the provisions to accomplish these tasks.
- 8. Proposed activities/studies are germane to the site characterization activities (i.e., they appear to be related to characterization of the site and its isolation capabilities), relevant to proposed program design schedules and program decision schedules, and address the SCP issues hierarchy.

- 9. The proposed work will not significantly endanger/compromise the waste isolation capabilities of the site.
- 10. Proposed tests/activities or requests for samples from DOE do not disrupt baseline conditions at the site, and do not result in an adverse impact on data collected or planned to be collected.
- 11. Intrusive tests meet NRC requirements regarding section 60.10 "Site Characterization" of 10 CFR 60.
- 12. There are provisions in the proposed plan for decommissioning/sealing of boreholes, trenches, etc., by affected parties.
- 13. Contractors and consultants do not have a conflict of interest with their work for the applicant and DOE, NRC, EPA or any other relevant Federal agency.
- 14. If the results of the test are to be used in the repository licensing process, these results will be provided to DOE and NRC in a timely manner.
- 15. Physical test specimens (e.g., drill cores) will be stored under controlled conditions and will be available for later re-tests and/or characterization.

VII. PAYMENTS-EQUAL-TO-TAXES
RESERVED

VIII. FEDERAL INTERIM STORAGE (FIS)

If Federal Interim Storage capacity is established, the NWPA, in section 136, authorizes OCRWM to make payments to States and units of local government within whose jurisdictional boundaries Federal Interim Storage facilities will be developed and operated.

Impact assistance payments are authorized by section 136(e) of the NWPA. Under this provision, OCRWM will make annual assistance payments to States and appropriate units of local government to mitigate social or economic impacts caused by the FIS facility. Guidelines for these payments will be developed, if necessary, at a later date in consultation with the potentially affected parties.

IX. TEST AND EVALUATION FACILITY (TEF)

The NWPA, in section 219, authorizes OCRWM to make payments to States and affected Indian Tribes that have entered into a C & C agreement with respect to development of a TEF for participation purposes. Participation payments are authorized by section 219(a) of the NWPA. Under this provision, OCRWM will provide funds to States and affected Indian Tribes to participate in monitoring, testing, evaluation, or other consultation and cooperation activities. Guidelines for these payments will be developed, if necessary, at a later date in consultation with potentially affected parties.

x. MONITORED RETRIEVABLE STORAGE PROGRAM (MRS)

If an MRS facility is approved by Congress, the NWPA, in section 141(h), authorizes OCRWM to make grants or payments to affected Indian Tribes or States involved in the MRS program for participation, impact aid, and payments-equal-to-taxes purposes. Section 141(f) also authorizes OCRWM to make impact aid payments to units of general local government.

A) Participation Grants

These grants are authorized by section 141(h) of the NWPA which incorporates by reference section 118. Guidelines for implementation of these grants will be developed at a later date.

B) Impact Aid Assistance

Mitigation assistance is authorized by sections 141(f) and (h) of the NWPA, which incorporates by reference section 118. Guidelines for implementation of these grants will be developed at a later date.

XI. COOPERATIVE AGREEMENTS

OCRWM intends to utilize the Cooperative Agreement mechanism to provide financial assistance to parties other than potential repository or MRS host States, affected Indian Tribes, and units of general local government in areas that will provide substantial benefits to both OCRWM and those parties with whom OCRWM has entered into cooperative agreements.

OCRWM intends to execute cooperative agreements with regional organizations to further the objectives of the transportation program and to enter into agreements with national organizations to further the objectives of general program information dissemination and interchange.

OCRWM GUIDELINES FOR THE

ADMINISTRATION OF THE PAYMENTS-EQUAL-TO-TAXES (PETT)

SECTIONS [116(c)(3) AND 118(b)(4)]

OF THE NUCLEAR WASTE POLICY ACT (NWPA)

1.0 INTRODUCTION

In accordance with sections 116(c)(3) and 118(b)(4) of the Nuclear Waste Policy Act (NWPA), the Department of Energy will make payments during the site characterization, repository development, and operation phases of the repository program in amounts equal to the amounts that the eligible jurisdiction would receive were it authorized to tax site characterization activities and the development and operation of the repository as it taxes other real property and industrial (or in the case of Indian Tribes, commercial) activities. In implementing this program, it is the intention of DOE to be responsive to the appropriate State, Indian Tribe or unit of general local government taxation process.

These guidelines describe the policy and delineate the process and administrative structure of the Department of Energy (DOE) for the development, implementation and administration of the Payments-Equal-to-Taxes (PETT) program. This program is pursuant to sections 116(c)(3) and 118(b)(4) of the Nuclear Waste Policy Act (NWPA). These guidelines do not apply to a Monitored Retrievable Storage (MRS) facility.

Six major areas are covered:

- The relationship of PETT to other NWPA financial assistance provisions;
- The concept of constructive tax liability;
- Definition of eligible jurisdictions;
- PETT commencement, scheduling and termination;
- Discussions between DOE and affected jurisdictions; and
- Accounting systems, procedures and activities;

Appendices to this paper include:

- Appendix A -- recent tax structures in candidate affected jurisdictions for the first repository;
- Appendix B -- accounting systems requirements:
- Appendix C -- PETT administrative procedures; and

Appendix D -- headquarters and project office roles.

The policy described and the process and administrative structure outlined below are general guidelines. They are intended to serve as a framework for discussions between DOE and affected jurisdictions.

2.0 PETT RELATIONSHIP TO OTHER NWPA FINANCIAL ASSISTANCE PROVISIONS

The amount of the payment will depend upon a precise application of the jurisdictions' tax structure to DOE property and activities. The PETT amounts, therefore, are neither related to impact mitigation grants, nor are they related to other grants or payments which may be made by DOE to affected jurisdictions.

3.0 CONCEPT OF CONSTRUCTIVE TAX LIABILITY

The Payments-Equal-to-Taxes (PETT) provisions of the NWPA are predicated upon the recovery of eligible taxes by States, Indian Tribes and units of general local government. Because of Federal sovereign immunity, no direct tax liability can exist between DOE and affected jurisdictions. To implement the PETT provisions of the NWPA, a tax liability will be construed for purposes of determining PETT; this will be known as a "constructive tax liability" because the liability is "constructed" for purposes of implementing the PETT provisions of the NWPA. These constructive tax liabilities will be determined by applying the tax structure of the eligible jurisdiction to the activities and property associated with site characterization, development and operation of a high-level nuclear waste repository.

DOE will use the constructive tax liability approach to assure tax equity for the affected jurisdictions. By placing DOE in a position resembling a private sector taxpayer, the PETT program will enable affected jurisdictions to receive payments equal to taxes levied against activities and property.

Using the constructive tax liability approach for purposes of PETT will also assure that DOE is treated in a manner comparable with other private sector taxpayers as required by the NWPA. When DOE and the eligible jurisdiction agree that a tax liability would exist that has not otherwise been satisfied, such amount shall constitute a constructive tax liability component of PETT.

Determination of the constructive tax liability will in all instances be guided by generally accepted accounting principles and jurisdictional tax structure and practices.

3.1. Candidate Taxes

DOE's property and ongoing activities are generally beyond the taxing authority of state and local jurisdictions. This principle, however is subject to an important exception when the Federal government chooses to accomplish its mission through the use of private-sector contractors to whom sovereignty does not extend. Under this circumstance, it must be determined which property and activities are attributable for tax purposes to the contractor (and therefore subject to state and local taxation) and which are, in fact, exclusively Federal (and therefore immune).

In order to insure that the state and local jurisdictions would be made whole in terms of tax revenues, Congress provides that, in essence, DOE's property and activities associated with a repository will be taxed either directly through contractors or indirectly through PETT. This principle effectively establishes the scope and limits of PETT. The tax laws of each jurisdiction must be examined as they would apply to DOE's property and activities without regard to immunity. Then, it must be determined which of the otherwise applicable taxes will not be paid due exclusively to immunity. It is these and only these taxes that are properly subject to PETT.

Determination of specific constructive tax liabilities requires the identification of taxes eligible for recovery under PETT by States, Indian Tribes and units of general local government; the identification will include the tax rates, assessment bases and exemptions. To be eligible for recovery under PETT, a tax must be constitutionally valid. It is anticipated that taxes levied against land, other real property and industrial (or commercial) activities by States, Indian Tribes, and units of general local government, for general purposes and under a general taxing authority, would be eligible.

3.2 Tax Structure

The tax structure is also an important element of PETT implementation. Determinations must be made of the classifications of taxes used to develop the taxable bases and associated rates, as well as exemptions. It is therefore necessary to identify for each eligible tax:

- Types of property or value measurements used to determine the taxable basis;
- Classes of rates applied to the taxable basis;
- Exemptions; and
- Scope of applicability.

Preliminary identification of taxes eligible for receipt under PETT include those which are related to property and DOE activities. The tax matrices in Appendix A identify recent rates, structure and exemptions applicable to every major class of tax in Washington, Nevada, and Texas, together with candidate units of general local government within these states. The matrices represent a preliminary compilation of the taxes in those jurisdictions. The matrices are only intended to identify tax structures as DOE understands them. The inclusion of a tax does not necessarily indicate that any PETT amount will ultimately accrue under that tax. Also, the failure to include a tax in a matrix does not indicate that DOE has determined that such tax is ineligible for PETT.

It is hoped that the states and local jurisdictions will assist DOE in formulation of a comprehensive list of eligible taxes. To expedite this effort, the matrix contains some comments on specific taxes. These comments are intended to focus the attention of prospective recipients on the preliminary analysis completed by DOE with respect to PETT implementation. It is hoped that early issue identification will start a dialogue aimed at early issue resolution.

3.3 Potential Activities Related to Determination of Constructive Tax Liabilities

Activities related to site characterization and repository development, construction and operation include:

- On-site improvements such as transport and utility development;
- Purchasing or leasing of real and personal property, including buildings, equipment and materials;

- Development and engineering activities during site characterization and site development, for example, activities relating to repository access systems, underground development, hydrology, geochemistry, drilling, testing and monitoring;
- Repository construction, including surface and underground facilities; and
- Repository operation activities including waste handling from the repository gate to the borehole.

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Activities related to site characterization carried out prior to May 28, 1986 will only be considered to the extent that the residual value of these activities are treated as improvements to real estate for purposes of assessment valuation.

3.4 Tax Assessment Bases for Inclusion in PETT

The basis for assessment determined by the jurisdictions for purposes of PETT must be consistent with the assessment bases within those jurisdictions for other taxpayers. For each tax assessment, DOE will require documentation by the jurisdiction for:

- Definitions and procedures used to determine assessed values; and
- Certification that the assessed value is comparable to that of other taxpayers in the jurisdiction.

4.0 ELIGIBLE JURISDICTIONS

DOE will award PETT to each State, Indian Tribe and unit of general local government that has a site approved for characterization within its boundaries. For purposes of PETT, the term "candidate site" means "...an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 112 for site characterization, approved by the President under section 112 for site characterization, or undergoing site characterization under section 113." (NWPA Section 2(4)).

As used in the NWPA the term "unit of general local government" means "...any borough, city, county, parish, town, township, village or other general purpose political subdivision of a State." [NWPA Section 2(28)] DOE will need the assistance of both State and local jurisdictions to determine which governmental entities qualify as a "general purpose political subdivision of a State" for purposes of the NWPA. It is expected that any governmental entity that constitutes a "general purpose political subdivision of a State" for other statutory purposes will be treated similarly for purposes of the NWPA. It should be noted that "special purpose" entities such as school districts, sanitation districts, etc., may not meet the statutory requirement that eligible jurisdictions be "general purpose" political subdivisions.

5.0 PETT COMMENCEMENT AND TERMINATION

5.1 Site Characterization

For the site characterization phase, the eligible jurisdictions may receive PETT from commencement through termination of activities in accordance with the following:

- PETT will apply when the President approves sites for characterization; and
- Payments will continue until such time as all activities associated with site characterization are terminated at the site.
- 5.2 Site Development, Construction, Operation and Termination of Operations

When the President approves a site for repository development, PETT continues and will terminate at such time as all such activities, development, and operation are terminated.

6.0 DISCUSSIONS BETWEEN DOE AND AFFECTED JURISDICTIONS

There are extensive differences among the tax structures of the candidate sites. Implementation of PETT provisions, therefore, must be tailored to specific jurisdictional requirements. Understanding jurisdictional tax structures and practices requires that DOE:

- Conduct discussions with officials from States, Indian Tribes and local jurisdictions, to agree on the specific taxes applicable to the PETT program, the procedures for determining assessments and payment schedules; and
- Meet with tax officials from eligible jurisdictions to identify local tax administration practices and procedures that are important to the implementation of PETT.
- 6.1 PETT Procedural Agreements with Eligible Jurisdictions

The following process should be followed to reach agreement on PETT with eligible jurisdictions:

- DOE will hold meetings and discussions with appropriate representatives of eligible States, Indian Tribes and units of general local governments. Discussions shall address:
 - reporting procedures for DOE and eligible jurisdictions;
 - specific PETT application procedures;
 - channels and methods for communication;
 - individuals and offices responsible for PETT within eligible jurisdictions; and
 - disbursement mechanisms.

(See Appendix C for a discussion of PETT administration procedures.)

A record of the discussions shall be maintained sufficient to establish the positions of all parties; and

- Subsequent to the completion of meetings between the eligible jurisdictions and DOE, the final PETT agreements shall be developed.
- 6.2 PETT Amounts and Mechanisms for Disbursements

The PETT disbursement mechanisms will be tailored, to the maximum extent possible, to accommodate the requirements of States, Indian Tribes, units of general local government, and DOE.

Significant differences exist in the frequency with which taxes are paid. Some taxes must be paid monthly while others, such as property and franchise taxes, are paid on an annual basis. DOE will take into consideration the specific tax requirements and practices concerning payment for each eligible jurisdiction in determining PETT disbursement procedures.

7.0. ACCOUNTING SYSTEMS, PROCEDURES, AND ACTIVITIES

Two essential elements in the determination of the constructive tax liability for PETT are (1) the basis for property valuation and (2) the valuation of activities engaged in by DOE. The accounting and reporting approach for determining the valuation basis of PETT should include the following considerations:

- Identification of site-specific accounting activities; and
- Roles and responsibilities of DOE and eligible jurisdictions.
- 7.1 Application of Generally Accepted Accounting Principles (GAAP)

Section 116(c)(3) of the NWPA directs that PETT be awarded to affected jurisdictions as such jurisdictions tax "other real property and industrial activity". This perspective implies that development of PETT would be based upon comparable values of property and activities similar to those applied to private sector property and industrial activities. *_predominant basis for_determining these values are the accounting records associated with the property or activities. In the private sector, these records are usually developed and maintained in accordance with GAAP.

Because of the private sector perspective required by NWPA and the use of GAAP by private sector industrial activities, it therefore appears appropriate for DOE to adopt GAAP to account for repository site activities. Among the primary advantages associated with the use of GAAP are:

- A consistent basis for comparison with similar industrial activities;
- An established, accepted set of criteria for financial measurements of property and activities;
- Consistency with tax law and principles used by most tax jurisdictions;
- Comparability, from one period to the next, of financial information; and
- Principles that are understood and applied by tax and accounting professionals.

Moreover, DOE is presently using GAAP in accounting for the administration of the Nuclear Waste Trust Fund and property acquired for use by the Office of Civilian Radioactive Waste Management (OCRWM).

At a more technical level, GAAP provides guidance and criteria for determining the value of assets and the financial measurement of activities eligible under PETT. These principles include criteria for:

- Capitalization expenditures for tangible and intangible assets;
- Capitalizing/expensing of expenditures for various activities related to repository characterization, development, and operation;
- Allocating costs from one period to the next; and
- Heasuring the value of activities, such as research and development, transportation, etc.

While the GAAP criteria are not a "cookbook" approach to determining the relevant tax basis, they are an acceptable starting point for many jurisdictions. To the extent that jurisdictional tax policy and practice result in deviations from values determined under GAAP, it will also be necessary to maintain records consistent with the individual jurisdictional requirements.

7.2 Identification of Site-specific Accounting Activities

In view of the disparate site activities and jurisdictional tax practices, policies and tax structures, separate accounting entities will be

established for each candidate site. DOE will maintain accounting systems for each candidate site which facilitate the determination of constructive tax liabilities for each jurisdictional tax structure at a site. Candidate criteria for the accounting classification of expenditures related to sites could include:

- Activities occurring within the geographic boundaries of the site;
- Special accounting requirements imposed by the affected jurisdiction;
- Common capital equipment used at all sites that should be allocated among the sites; and
- Expenditures for the acquisition of assets on or at the site.

In addition to the identification of each site as an individual accounting entity for overall accounting purposes, it may also be necessary to segregate the types of activities related to the discrete phases of site characterization, development and construction, operation, and decommissioning. Segregation by phase may be desirable because of:

- Differences in the timing of impacts which various activities will have on PETT;
- The need for disaggregated information for DOE and affected jurisdictions to perform planning and budgeting; and
- Differences between the GAAP classification criteria and the tax requirements of specific jurisdictions.

Finally, it will be appropriate to consider the effects of the timing differences (if any) between the Federal fiscal year for calculating PETT and the tax year(s) of the affected jurisdictions. It may be that the Federal fiscal year will not correspond to the affected jurisdictions' fiscal years, thus creating an additional burden for reconciliation by the accounting systems at individuals sites.

See Appendix B for a review of accounting systems, procedures and activities.

7.3 Roles and Responsibilities of Affected Jurisdictions and DOE

To meet the PETT responsibility, DOE must provide relevant, detailed financial reports to the affected jurisdictions. However, affected jurisdictions must first provide DOE with sufficiently detailed information to facilitate DOE conformance with local tax policy, practices and procedures. Such detail could include:

- Types of taxes to be assessed/levied;
- Levels and changes in tax rates;
- Levels and changes in assessment bases; and
- Prequency of payments required by the affected jurisdictions.

In view of the crucial role this information has on the evaluation of payment applications as well as on DOE planning and budgeting, it seems appropriate to impose related reporting requirements on affected jurisdictions. These requirements would be in addition to the DOE payment reporting requirements contained in Appendix B.

APPENDIX A

TAX MATRICES

THE MATRICES ARE ONLY INTENDED TO IDENTIFY TAX STRUCTURES AS DOE UNDERSTANDS THEM. THE INCLUSION OF A TAX DOES NOT NECESSARILY INDICATE THAT ANY PETT AMOUNT WILL ULTIMATELY ACCRUE UNDER THAT TAX. ALSO, THE FAILURE TO INCLUDE A TAX IN A MATRIX DOES NOT INDICATE THAT DOE HAS DETERMINED THAT SUCH TAX IS INELIGIBLE FOR PETT.

IT IS HOPED THAT THE STATES AND LOCAL JURISDICTIONS WILL ASSIST THE DOZ IN FORMULATING A COMPREHENSIVE LIST OF ELIGIBLE TAXES. TO EXPEDITE THIS EFFORT, THE MATRIX CONTAINS SOME COMMENTS ON SPECIFIC TAXES. THESE COMMENTS ARE INTENDED TO FOCUS THE ATTENTION OF PROSPECTIVE RECIPIENTS ON THE PRELIMINARY ANALYSIS COMPLETED BY DOZ WITH RESPECT TO PETT IMPLEMENTATION. IT IS HOPED THAT EARLY ISSUE IDENTIFICATION WILL START A DIALOGUE AIMED AT EARLY ISSUE RESOLUTION.

WESTINGTON STATE

TAX	: RATE	s structure	: EXEMPTIONS	: COWENTS
Reel	193.16/91000	shoosood value of texable real	:Federal/State &	afor purposes of the PET
Property	1	spreparty adjusted to 196% true	steest government;	tprogram, real property
	:	cand fair value.	1	towned by the U.S.
	1	*	:Intengibles.	agovernment will be
	•	•	1	streeted as though it is
	•	•	•	that exempt from reel sproperty tem.
		. 1	•	thacherth cave
	*			•
Personal	:43,16/21000	sassessed value of temple root	:Business inventories.	•
reperty	1	spreperty adjusted to 100% true	•	*
	1	rand fair value.	2	•
	1		1	1
Due (mess	:Hejer rates:	staur major categories: Afging,	linterstate commerces	, *
B Occupati	lensretell - 0.471%	stholesaling, Retailing, Services.	1	1
	:manufacturing/	Itspeed or grees receipts.	stillities.	•
	substanting -	scoreldered as an excise tex on	.	•
	19.494%	the privilege of doing business.	•	•
	services - 1.5%	theseured by gross fricate, gross	•	•
	1	sproceed of sales, or the value		•
	1	tet products.	•	•
	1	*	•	5
h b lie	. anielita com	sincludes privately owned firms	stetali sales ten does	•
rente Stillty	:3.652%;	sproviding public services, and	and apply to stillty	
uttity	surben • 0.642%;		:sales.	1
	:motor trans.	:by govt. sgencies. Applies	*	•
	;and att	Ito gross income.	1	*
	others - 1.926%	:	t	;
			•	•

A-1

MASHINGTON STATE (Continued)

TAX	e MIE	* STRUCTURE	: EXEMPTIONS	: COMMENTS
lotes	:6.5% : : : : : : :	risposed an tengible personal spreperty purchased for use by the consumer; improvement of real ser personal prop.; charges for stabor & services rendered in scannection with services to stangible and real personal spreperty.	:Non-profit organizations; :Sales to nonresidents; :Interstate commerce; :Covernmental activities. :	rPETT impact should be sminimal. Sales taxes swill be paid primarily sby the contractor.
Dog	:6.5% : :	stangible personal property, the seale of which has not been subject to the sales tax.	: : : :	spect should be sminimal. Use texes swill be poid primarity sby the contractor.
loter Fuels Lecol Inc	stanges from s.12-,14/get. s	everiable rate is determined semi- termsetly based on 10% of the taverage fuel price.	:Federal/State :government vahicles. :	rPETT impact should be rainimal. Motor fuels rBasoline taxes will be speid primarily by the recontractor.
Special Fuels	:Renges from :.1216/get. :	:Levied on all fuels other than :gesoline. :	:Federal/State :government vehicles. :	rPETT impact should be rminimal. Special furl staxes will be paid rprimarily by the rcontractor.

*

PRAFT

MASHINGTON STATE (Continued)

tax	e RATE	a STRUCTURE	t EXEMPTIONS	s COMMENTS
Hotor	:2.2% on fetr	sfelr merket value determined	:Federal/State	(PETT Impact should be
.Vobielo	market value	sby the Dapt. of Revenue.	sgovernment vehicles.	minimal. Noter Vehicle
Encise	sof Machington	3	•	stegistration foos will
8	registered	8	2	the paid primarity by
3	subicte.	8		1the contractor.
B .		2	1	1
teeschold	. 123	stapeoed on all teases of public	:Temporary leases of less	:• !
Encise		spreperty in lieu of property	other 1 month, leaves	1
t		stanes. Heasured by contract	swith texable rents of	1
B		rent or couputed economic rent.	sgreater than \$250/yr	1
- B		:Cities and counties may lavy	rand certain leases on	1
- 8		rup to 50% of the tex.	studion tend.	1
		_	_	•

COUNTY

: TAX	: MATE	s structure	e exemptions	t COMENTS t
:Preparty : : : : : : : : : : :	:812/81000 : : : : : : :	:Assessed value of tamble real :preparty adjusted to 100% true :and fair value. : : : : : :	:Federal/State & :local government. : : : : : : : :	responses of the PETT representation of the PETT
:Reet :Estate :	:512/51 000 : : : : :	shapesed upon the sale of real spreperty and is paid by the section.	8 8 8 8	:PETT impact should be : :minimal. Land will not : :be seld by the U.S. : :government. :

RICHLAND

Bs.

2				
: TAX	e RATE	s structure	2 EXEMPTIONS	e COPPENTS
smartelpol strates stor stor stor stor stor stor stor sto	:Varies with :business :cotopery. : : : : : : : : : : : : : : : : : : :	rispeced on private business and remicipal and private utility responses. Four sajor kinds ref tex bases: 2- a X of grees revenue; 2- fixed fee for a specific residence category or type; 3- fee based on the ranber of responses; and refer based on the smount of refer space of the firm.		rPETT impact should be reinimat. Yex is only a imposed on those recorporates located reithin the texting a jurisdiction.
:Seles : : : : : : :	1.5% 1.5% 1.5% 1.5% 1.5% 1.5%	state imposed is an the setting sprice or value of the article sused. 2 2 2 2	elf Benten County has to seles ten in effect t(currently it does tent), the city ten trate will be .425%. 1	rett impact should be sminimal. Sales taxes swill be poid primarily rby the contractor and swill be poid only if rincurred in the taxing sjurisdiction.
:Use : : : : : :	1.5% 1 1 1 1	state imposed is on the selling sprice or value of the article sused.	:If Benton County has to sales ton in effect t(currently it does tnot), the city ten trate will be ,425%, t	rPETT impact should be swiningt. Use taxes will be peld primarily thy the contractor and will be peld only if incurred in the texing purisdiction.

RICHLAND (Continued)

			********	*********						
*	TAX	:	RATE	1	STRUCTURE	8	EXEMPTIONS	*	COMENTS	8
_	Lesoshold Encise	142		-	I shen lessing publicly real or personal	:			impact should be not. Tax will be	
		*	•		y within Richland.			-	only if incurred	
:		1		*		: :			he taxing adjection.	:
				8		\$		8		1
T.										-

MEYADA STATE MATRIX

TAX	e RATE	s STRUCTURE	: SELECTED EXEMPTIONS	: COMENTS
Reet	1.62/8199	:Legislature sets state rate, local	:United States, State,	:For purposes of the PET
Property	stotet ed	spoverning boards local ad valores ten.	and Local government preparty	iprogram, real property
	rveteren		*	towned by the U.S.
*	stax connet	strop. sessessed at 35% of tempte value;	1	spoverment will be
	tencong	svelue is ditermined by appreciael of	8	streeted as though it is
	123,64/2100.	sfull cash value of land along with	1	anot exempt from real
		supprefect of replacement cost of any	•	sproperty test.
•	8	:Improvement less all applicable		1
	8	rdepreciation and obsolescence.	•	
	1	1	3	•
	• 1	sTaxable value of a possessary interest	8 ·	
	1	in fed. govt property is determined	•	1
	1	seither by capitalizing the fair econ.	*	1
	1	tincome expectency, or by reducing the	1	•
	1	proplacement cost by all applicable	3	1
	1	sdepreciation and obsolescence;.	•	•
	1	* [•	•
	1	:Depreciation-1.5% of replacement cost	•	•
	1	son an improvement made on real prop.	t	•
•		3	:	•
		siteal and personal prop. normally	•	•
•	8	sexempt (e.g. fed. owned) are texed	. 3	*
	1	sif prop. ses "tessed, toened, or	•	•
	1	sotherwise made available to a business	.	•
	1	sconducted for profit. Provisions for	3	•
	:	idetermining posessory use and tex	•	•
	:	stiability of ea. contractor are		•
	•	contained in an agreement b/t Hye	I ·	•
	:	:County and the Atomic Energy Comm.	\$ •	1
	:	:	Ŧ	

(Continued)

e TAX	e RATE	e STRUCTURE .	: SELECTED EXEMPTIONS	: COMENTS :
:Personal :Property :	2.62/3180 2 1 1	standble value determined by cost of sreplacement less all applicable sdepreciation and absoluscence.	:Hotor vuhicles, :business inventories. :	1 : : : : : : : : : : : : : : : : : : :
:Sales : : : :	:2% : : :	:Applied to all gress receipts from :reteil asies. t	:Natorials purchased for use sin performance of U.S. :government contracts. :	:PETT impact should be : :minimal. Sales taxes : :will be paid primarity : :by the contractor. :
:Use : : : :	:2% : : : :	simposed on the storage, use or scureuspien of personal property within stevade that use purchased sutside Nevade. sipplied to the purchase price.	:Rotor vehicle furl : : :	rPETT fupact should be : sminimal. Use texes : smill be paid primarity : rby the contractor. :
riccel richool richool richool ri	21.5X 1 2 2 2	:Base is the same as Sales and Use :taxes. Comingled with Sales and :the tax. This tax is imposed over :and above the ZX Sales and Use tax :	1 1 1 1	rPETT impact should be rainimat. Local School : Support taxes will be : spaid primarity by the : scontractor. :
:Basic City/ :County :Relief :	t.5% t t :	:Base is the same as Sales and Use :texes. Comingled with Sales and :Use tal. This tax is imposed over :and above the ZX Sales and Use tax :	:	2PETT fupact should be 's iminimal. Source City/ : :County Relief toxes will : :be paid primarily by the : :contractor. :

(Continued)

1 TAX	z RATE	s structure	: SELECTED EXEMPTIONS	E COMMENTS &
:Supplemental :City/County :Relief :	21.75% 2 2 2 2	stans have an Sales and the taxes. staningled with Sales and the taxes. sthis tax is imposed over and above sthe ZR Sales and the tax. A state smandated county imposed tax designed to sportially replace local property taxes.	*:	:PETT inpact should be : :minimal. Supplemental : :City/County Relief taxes : :will be peld primerity : :by the contractor. : :
:Encise/Notor :Vehicle Fuel :Tex : : : : : : : : : :	sveries with stud type. 2. 2. 3. 4. 5. 5. 5. 6. 6. 6. 6. 6. 6.	simposed on each gollen of motor svahicle and jet fuel sold in the setate. S S S S S S S S S S S S S S S S S S	The tax peld on fuel used off the highways may be refunded til at least 200 gallons, are tused over a 6 month period, tBCE contractors at the NYS tore often eligible.	•
gVahicle sPrivilege : : :	2.04 on each 181.00 of 1valuation. 2 3	simposed for operating any vehicle upon spublic huys. Vehicle ouned by the SU.S. government which are leased, leaned, for otherwise made available to a business scanducted for profit are subject to the tex.		:PETT impact should be ::minimal. Vahicle ::Privilege taxes will be ::poid primerily by the ::contractor. : : :

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HEYMA STATE MATRIX (Continued)

							•
2 TAX	1 RATE	STRUCTURE		SELECTED EXEMPTIONS		COMENTS	2 2
shet Hine :Preceds	:Same as Book :Property.	sten en extrected ainerals.	:		:Preb: :to Pl	ebly not applicable	: :
: :throughoyaant :Cooperaation :	· comme farth.		:	••••••	:mini :Cosp :be p	impact should be met. Unsupleyment encetion texes will eid primarily by the rector.	
•	set salary.					*************	- 1

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MIE COUNTY

***********		*******************************	• • • • • • • • • • • • • • • • • • • •		
1 TAX	: RATE	t STRUCTURE	t EXEMPTIONS	: COMMENTS	:
iPreparty 1 1 2 1 1 1	1,4879/8100 1 1 1 1 1 1 1	efotal ad valorem tex levy for all spublic purposes (State and local) axet and exceed \$3.64/\$100 assessed valuation. 1 1 2 1 1	10.5., State, and fecal spoterment property : :	ofer purposes of the PETT opening, real property counsed by the U.S. opening will be attrested as though it is anot exempt from real opening tem.	:
:Notor fuel :exclos : : : :	2.04/gol over pateto rato. 1 2 3	Isoposed on each getten of motor which and jet fuel sold in the setate. I I I	The tex poid on fuel used off the highways may be refunded tif at least 200 gallans, are tused over a 6 month period. 1902 contractors at the NTS tare often eligible.	minimi. Notor furt	

7-11

STATE OF TEXAS

: TAX	E RATE	S STRUCTURE	t EXEMPTIONS	COMMENTS :
:Franchise : : :	:15,25 for each \$1000 :of tamble capital :uithin texas, :Hinimus of \$48,00.	storparate capital value sbased. s	* * * * * * * * * * * * * * * * * * *	
:Seles t t t	:6.125% : : : :	papplied to all retail sales and rentals plus sales of materials to contractors and seales of machinery to centr., safgre., and producers.	:Goods sold for use of U.S. :Govt., State of Texas or :its political subdivisions. : :	:PETT impact should be : :minimal. Sales taxes will : :be paid primarity by the : :contractor. : : :
stine s	14.125% of price supen storage, use or scannesption of temple situms purchased, leased sor rented for use in TX	simposed on property bought soutside one state or unit sof general local government sand used in another state or sunit of general local govt.	:Sales tan paid for items tin another state may be tapplied as credit to Texas tabligation.	rPETT ispect should be rminisel. Use taxes will rbe peld primarity by the rcontractor. t
:Hotor Fuels :	:Data not available : :	; ; ;	* * * * * * * * * * * * * * * * * * *	iPETT impact should be : iminimal. Motor fuels taxes : ivill be peid primarily by : the contractor. : :

STATE OF TEXAS (Continued)

: TAX	E RATE	E 2 STRUCTURE	: EXEMPTIONS	2 9 2 COMENTS 2
: :: :: : : : : : : : : : : : : : : :	Cotogories: Commercial Mtr. Vah. and Truck Tractors; base fee + increm. unight fee. Passunger Care; yearly flet fee based upon the age of the vehicle. Truck Tractor or Coun. Vah. w/semi- trailers; base fee + incremental ut. fee. Trailers; see above.			PETT fapact should be : rainisat. Excise taxes will : rbe peid primarity by the : rcentractor. : : : : : : : : : : : : : : : : : : :
			**************************************	• • • • • • • • • • • • • • • • • • • •

7-13

DEAF SHITH COUNTY

### Page 1	z TAX	2 RATE (1784)	SYNUCTURE	2 2 EXEMPTIONS	E COMENTS	:
zen enruel rate of 7%, ccelculated from the dates	:Reel :Preperty : : : : : : : : : : : : : : : : : : :		rand fair market value so of stan. 1. 2 stancessed Values Appreland svalue multiplied by the seasessment ratio (1992). : 2 sfour stages: 2 Apprelant 2 Value Equalization 3 Tax Assessment	produced: If a mineral pinterest is not being produced, the preparty is appraised at the price for which the pinterest would sell while the mineral is in place and	the use of the land cappreled for opticulture schanges, an additional tax is imposed on the land, with tax is equal to the sdifference between the states imposed on the land ofer each of the five years optically the change occurs and the stax that would have been staxed on the basis of market value in each of others years. Interest at on annual rate of 7%, scalculated from the dates on which the differences is sould have become due,	* : : : : : : : : : : : : : : : : : : :

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SEAF SMITH COUNTY (Continued)

t t TAR	2 2 RATE (1104)	S STRUCTURE	1 1 EXEMPTIONS	3	CONSTRUTS	1 1
reporty reporty reporty reporty reporty	2.513 per \$100 accessed evoluation, 2 2 2 2	stee Real Property for salefinition of valuations. I stersonal property that can the seen, weighed, measured, afelt or otherwise perceived thy the senses.		e :		: : : :

PRINTEIPALITIES IN THE STUDY AREA - AMARILLO, MEREFORD, CANYON

•••••	*******	**************		********************	••••••	
:	TAX	E BATE	8 9 STRUCTURE	2 EXEMPTIGHS	: COMENIS	:
:Soler	1	:1% Notro. Transit :Authority (NTA) tan, :where applicable, not :to exceed 1%. :	:See state metrix t t t	:See state matrix : : : : : : : :	rPETT impact should be rminimal. Sales texes will the paid primarily by the recontractor and will be repeid only if incurred in rathe taxing jurisdiction,	: : : : : : : : : : : : : : : : : : : :
:100		:1% Metro. Transit :Authority (NTA) ton, :nhere applicable, not :to exceed 1%. :	:See state metrin : : : : : :	:See state astrix : : : : : : :	iPETT impact should be iminimat. One taxes with the paid primarity by the icontractor and will be ipaid only if incurred in ithe taxing jurisdiction.	3 3 3 3 4 4 3

SCHOOL DISTRICTS - MEREFORD, VECA

· · · · · ·	TAX	g RATE	8 SYNUCTURE	********	EXEMPTIONS	: COMMENTS	:
:Real	••••••	rmot eveltable : : :	:Not evelable 1 2 3	stok a	watteble	trans tovied in "special- spurpose" tex districts are sepecifically excluded by sp.L. 97-425 (Nuclear Masta spolicy Act of 1982)	2
				••••	••••	•	

SPECIAL DISTRICTS PROPERTY TAXES

1 DISTRICT	s RATE (1984)	s stricture	1	EXEMPTIONS	: COMENTS	:
	2.128 per \$100 accessed evoluntion 2 : 3	: : :	: : : :		:Taxes levied in "special- :purpose" tex districts are :specifically excluded by :P.L. 97-425 (Nuclear Neste :Policy Act of 1982)	2
	2.00725 per \$100 ressessed valuation 2 2	8 8 8 8 8	2 2 3 4 5 5		:Texes levied in "special- :purpose" tex districts are :specifically excluded by :P.L. 97-425 (Nuclear Weste :Policy Act of 1982)	:

APPENDIX B

ADDITIONAL PETT ACCOUNTING CONSIDERATIONS

B.1 Accounting Systems

Although GAAP does not address the specific form of the systems to be used for accounting activities, the end-products of the systems are generally described. Major report components of an accounting system include:

- Statement of Operations;
- Balance sheet;
- Sources and uses of funds; and
- Disclosure of detail regarding major activities/transactions (such as to support individual constructive tax payments).

Because the information required to determine PETT comes primarily from data related to assets and expenses, the income statement and balance sheet for each site would not have the same meaning as for a private firm. No "income" would be realized, although funds would be supplied through the Trust Fund to cover expenses. Similarly, funds would also be provided to acquire assets, although no corresponding accounting entries would necessarily be made to categories of equity or debt. The major components of the respective statements would therefore include:

- Statement of Operations:
 - cash expenses
 - non cash expenses
 - funds supplied by the Trust Fund to cover the expenses
- Balance sheet:
 - assets
 - payable, accrued expenses
 - funds supplied by the Trust Fund to finance acquisition of the assets
- Sources and uses of funds:
 - reconciliation of changes in the investment in assets at the site

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Multiple subsidiary systems would also be necessary to have the accounting system conform to PETT-related requirements, as well as to facilitate the various budgeting and planning activities of DOE and the affected jurisdictions. These activities might also include the reconciliation of fund accounting methods used by governments and the GAAP accrual accounting methods used by private sector industrial entities. These subsidiary systems could include those related to:

- Funds provided by DOE;
- Classes of expenses incurred as related to the specific sites; and
- e Classes of real and personal property, plant and equipment

Sufficient detail will likely be required to meet the tax requirements of affected jurisdictions, particularly the level of disaggregation typical for real and personal property. This requirement will entail the development of extensive property records for each of the sites.

B.2 Reporting Requirements

Section 302(e) of the NWPA requires an annual report to Congress on Trust Fund activities. This report is currently developed using GAAP and is audited by independent, private-sector auditors. Additional reporting requirements likely will be necessary to implement PETT. OCRWM and affected jurisdictions will need reports to perform planning and budgeting activities. Examples may include:

- An annual evaluation of conformance with accounting policies and requirements; and
- Supplemental unaudited quarterly reports with less detail.

B.3 Roles of Auditors

B.3.1 DOE Auditors

For purposes of PETT, independent auditors employed by DOE for the audit of site-related accounting activities will limit the scope of the audit to conformance with GAAP and the tax requirements of affected jurisdictions. The DOE auditors will, in general:

- Be prohibited from acting in an audit or consulting capacity with the affected jurisdictions;
- Be available to affected jurisdictions for explanation of audit results regarding PETT; and
- Be limited to explanation of site-related accounting issues for affected jurisdictions.

B.3.2 Auditors of the Affected Jurisdictions

It is expected that auditors from the affected jurisdictions will want to examine DOE's accounting policies, practices, and procedures to ascertain conformance to the requirements. In view of the PETT requirements under NWPA, such evaluation will provide valuable information to DOE. However, there are questions regarding access and costs associated with this examination. Consequently, it will be necessary to carefully specify the timing of such audits, the use of DOE personnel, and access to DOE records.

APPENDIX C PETT ADMINISTRATIVE PROCEDURES

C.1 Overview

The administrative procedures outlined below are intended to serve as guidance for implementing the payments-equal-to-taxes (PETT) provisions contained in sections 116(c)(3) and 118(b)(4) of the Nuclear Waste Policy Act of 1982. The specific roles of the Readquarters and Project Offices in the management and administration of the PETT program are described below in Appendix D.

C.2 Determination of Eligible Jurisdictions

- (1) The Office of Geologic Respositories and the Project Offices will define the three candidate sites.
- (2) The Project Offices will identify the eligible jurisdictions for purposes of PETT with the concurrence of the Office of Geologic Repositories.
- (3) The Project Offices will notify jurisdictions of their eligibility.
- (4) Jurisdictions not identified as eligible may hold discussions with the appropriate Project Office for the site on this issue. The Project Office will consult with Headquarters in Considering such a request for eligibility.

C.3 Discussions and Agreements with Eligible Jurisdictions

- (1) DOE Operations Offices (through the appropriate Project Offices) will be responsible for interactions with the eligible jurisdictions.
- (2) The Office of Geologic Repositories will notify the Operations Offices when discussions between the Project Offices and eligible jurisdictions should commence.
- (3) Each Operations Manager will appoint a discussion team to arrange and conduct meetings with eligible jurisdictions, keep minutes of meetings, maintain frequent communication with Headquarters, and reach tentative agreements on PETT-related issues with the eligible jurisdictions.
- (4) A Headquarters representative, as a permanent member of the aforementioned team, will participate in major meetings between the Project Offices and eligible jurisdictions. This representative will:

- advise Headquarter's Offices on the progress of discussions and obtain their concurrence;
- ensure that draft agreements reached between eligible jurisdictions and the Project Offices are consistent with DOE policy; and
- seek clarification on issues on behalf of Headquarters, when necessary, and facilitate the exchange of information between the Project Offices and Headquarters.
- (5) The Headquarter's Office of Geologic Repositories (OGR) must concur on all agreements reached between eligible jurisdictions and the Project Offices.
- (6) Discussions and subsequent agreements will be focused on:
 - the procedures and framework for discussions, including channels and methods for communication and reporting procedures;
 - applicable taxes and rates, together with assessment procedures; and
 - PETT amounts.

C.4 Authorizations, Obligations and Disbursements

C.4.1 Authorizations

- (1) Congressional approval is required for all expenditures made from the Nuclear Waste Fund.
- (2) Authorizations to make PETT payments for real estate taxes applicable to PETT will be provided by the DOE Contracting Offices (CO) or a Program Representative who has been assigned responsibilities as a Contracting Officer's Technical Representative (COTR). The CO or COTR at the DOE Operations Office will facilitate processing and assist eligible jurisdictions in receiving real estate tax payments.
- (3) Authorizations to make other payments (e.g. sales, personal property, B & O, and use taxes) will be made by the Nuclear Waste Fund Contractors or predominant Government Owned Contractor Operated (GOCO) Contractor at each DOZ Operations Office through their normal business practices.

C.4.2 Obligations

- (1) The process which initiates an obligation for real estate taxes will be either the receipt of a tax assessment from an eligible jurisdiction or the filing of a tax form by the DOE Project Office. All other obligations will be initiated through the normal process of contract award at each DOE operations office.
- (2) The Nuclear Waste Fund is subject to the same anti-definciency restraints as are imposed on other DOE programs. Obligations can not exceed appropriation levels authorized by Congress and can not be made in amounts which exceed obligation authority limits.
- (3) Headquarters will concur on PETT amounts prior to obligation.

C.4.3 Disbursements

- (1) Based on the terms of PETT agreements, the CO or COTR at the DOE Operations Office will receive and review the real estate tax assessments from eligible jurisdictions and tax forms from Project Office staff, both of which will constitute requests for PETT payments.
- (2) The Field Office CO or COTR will transmit the requests for real estate tax payments and all concurrences to the Field Office Finance Directors.
- (3) The DOE Contractor or GOCO Finance Director will normally request payment from a Treasury Disbursing Office. The Treasury Disbursing Office must first receive approval for a disbursement from a DOE Finance Director prior to the disbursement of funds.
- (4) The Field Office Finance Directors will certify to the U.S. Treasury that amounts are correct and funds are available. Payments to recipients which are in excess of \$25,000 are normally made by wire transfer through the U.S. Treasury. Payments of less than \$25,000 are made by Treasury Check.

APPENDIX D

HEADQUARTERS AND PROJECT OFFICE ROLES

/D.1 Overview

Headquarters and Project Offices each have responsibilities in the management and administration of the PETT program. Headquarters will oversee the process to promote consistency and equity throughout the PETT program; Project Offices will administer the individual payments to eligible jurisdictions.

D.2 Role of Headquarters

Beadquarters in consultation with Project Offices, will be responsible for:

- Analyzing and developing programmatic financial assistance policies and procedures;
- Responding to requests for financial assistance information from GAO, OMB, Congressional committees, program management, and others;
- Ensuring consistency and equity in administration of the PETT program;
- Promoting effective interaction among Project Offices;
- Performing Office of Geologic Repositories (OGR) wide programmatic, financial and legal review of PETT agreements;
- Working with Project Offices to resolve PETT-related issues; and
- Reviewing activities conducted within PETT to ensure program-wide comparability.

D.3 Role of Project Offices

The Project Offices in consultation with Headquarters will be responsible for:

- Notifying eligible jurisdictions of availability of NWPA PETT programs;
- Identifying issues and proposing resolution for coordination with Headquarters;
- Submitting PETT award documents to Headquarters for concurrence;

- Upon concurrence, providing PETT and forwarding copies of PETT documents to Headquarters;
- Administering PETT;
- Maintaining PETT documentation and administrative records;
- Monitoring activities and records to ensure programmatic and financial compliance; and
- Porwarding copies of monitoring reports and reports from jurisdictions receiving PETT to Headquarters.

COMMENT RESPONSE DOCUMENT ON OCRWM AND OGR DRAFT FINANCIAL ASSISTANCE GUIDELINES

SUMMARY COMMENTS AND RESPONSES
ON THE
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT
AND THE
OFFICE OF GEOLOGIC REPOSITORIES
DRAFT FINANCIAL
ASSISTANCE GUIDELINES

November 1986

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INTRODUCTION

In 1986, the U.S. Department of Energy (DOE) developed two sets of draft financial assistance guidelines for the Civilian Radioactive Waste Management Program. These were titled:

- o Office of Civilian Radioactive Waste Management Preliminary Draft Financial Assistance Policy Guidelines, July 1986 [hereafter referred to as the draft OCRWM Guidelines]
- o Internal Guidelines for Implementing Financial Assistance (Grants) for Repository Programs under Sections 116 and 118 of the Nuclear Waste Policy Act of 1982, revised July 1986 [hereafter referred to as the draft OGR Guidelines].

These preliminary draft guidelines were informally provided to Affected States and Indian Tribes for review and comment. Approximately 125 comments were received*

Following are categorized comment summaries as well as responses for each comment category. The OGR and OCRWM Guidelines are being combined into a single document and are being revised after review of the comments received from the states and tribes. The comments have been considered and are being incorporated in the revised guidelines as appropriate.

Some additional comments were received on an earlier draft of the OGR (Office of Geologic Repositories) Guidelines. Those comments that were already accommodated in the July 1986 revision are not included here.

GENERAL COMMENTS

CONSISTENCY WITH POLICY AND OTHER REGULATIONS

Some of the comments suggested that the OCRWM and OGR guidelines be made consistent with each other or be combined into a single document. One commenter also suggested that the transportation-related funding guidelines be added to ensure that other documents are consistent with OCRWM financial assistance policy. Two commenters suggested that the OCRWM policymakers use and conform to the definition of "grant" that is contained in 10 CFR 600.3. Another suggested using the term "continuation" instead of "renewal applications" (OCRWM, p. 20, item C) in order to be consistent with other regulations.

Response

DOE agrees that the OCRWM and OGR financial assistance guidelines should be combined into a single document. This will eliminate any inconsistencies between the two sets of guidelines. Transportation-related funding guidelines are being added in a new chapter on transportation. Other chapters are being added specific to the topics of the repository, monitored retrievable storage facility, test and evaluation facility, federal interim storage, payments equal to taxes (PETT), and cooperative agreements. The definition of "grant" is changed to that used in 10 CFR 600.3. The terms "continuation grants" and "renewal grants" will be used when referring to continuation and renewal applications.

CONSISTENCY WITH THE NUCLEAR WASTE POLICY ACT

Many comments referred to the need to be consistent with the Nuclear Waste Policy Act (NWPA), to reference the NWPA, and to emphasize NWPA requirements instead of OCRWM objectives or requirements. One commenting agency asked that the use of "Authorities" (OCRWM, p. 4) be restricted to DOE's NWPA responsibilities, therefore deleting definitions of "contracts" and "cooperative agreements" (OCRWM, p.5) and the "Other Funding Mechanisms" section (OCRWM, p. 14). Two commenters questioned what other funding regulations and authorities would be overridden by the NWFA.

Response

The NWPA is now referenced (instead of OCRWM) and cited where appropriate, in accordance with the comments made. The list of "Authorities" includes applicable regulations. The definition of "contracts" has been deleted, and a chapter on cooperative agreements has been added.

[Response on regulations and authorities overriding to be prepared by BWIP.]

CORRECTIONS TO NWPA Citations

Two commenters suggested corrections to the NWPA Citations. One suggested deleting the "(1)(B)" in the Section 116 citation and the "(2)" in the Section 118 citation in Part 4.3 of the OGR guidelines where activities that may be funded during site characterization are discussed. Another noted that Section 116(c)(1)(A) authorizes financial assistance to states and tribes affected by site characterization, but this was not cited in the second paragraph of page 8 in the OCRWM document.

Response

These corrections have been made where appropriate in the revised document.

REQUESTS FOR FULL FUNDING

Several requests were made to DOE to add provisions for <u>full</u> funding of <u>all</u> costs that the States and Tribes incur in participating in the Civilian Radioactive Waste Management Program, and that costs be borne by the generators of the waste.

Response

Funding is provided as allowed under the NWPA and applicable Federal regulations.

BROADER INTERPRETATION OF ALLOWABLE FUNDING

Commenters suggested that the word "development" as it applies to impact assistance requests, is interpreted too narrowly and should be expanded to provide for impact mitigation assistance during site characterization. These commenters added that the precedent exists for a broader reading of the Act to provide impact assistance during site characterization. In addition, DOE

should clarify that impact assistance payments can be made for long term impacts that continue past site characterization, and for activities related to MRS facilities.

Response

If "mitigation payments" refers to grant funding that would serve to compensate some party for impacts occurring during site characterization, aside from PETT which could conceivably serve such purpose, DOe does not have such authority under NWPA. Since the MRS is not yet authorized, it would be premature to make any comparisons.

Assuming "impact assistance payments" refers to grant funding, and that the focus of the question is on sites not selected for licensing, the answer is no.

REQUESTS TO COVER ADDITIONAL COSTS

Many commenters were concerned with additional costs that they believe should be funded by DOE. These included the costs of Tribal and State participation in Nuclear Regulatory Commission (NRC).licensing proceedings, non-DOE-sponsored meetings and workshops, and inter-Tribal information meetings. Commenters also stated that that guidelines should recognize that States and Tribes are entitled to conduct independent studies, and studies to compare other sites to their own. Several comments were directed at the listing of program phases on page 7 of the OCRWM guidelines, suggesting that the list should be expanded to include the licensing phase. One commenter also requested that a "prenotification" phase be added to include funding for States in the second repository (crystalline rock) program.

Response

The licensing phase is added to the list of phases (OCRWM, p. 7) so that State and Tribal participation in the NRC licensing proceedings will be included. Where applicable, State and Tribal attendance at non-DOE-sponsored meetings and workshops as well as inter-Tribal information meetings will be eligible for funding. States and Tribes will also be able to obtain funding to conduct independent studies of their sites. However, studies to compare other sites

to their site will be limited to review of DOE and other Federal documents; independent studies by States and Tribes at other sites (sites other than the ones in their own jurisdictions) will not be fundable.

The NWPA does not provide for financial assistance prior to the identification of potential repository sites.

INTRUSIVENESS OF THE DEPARTMENT OF ENERGY

Several commenters generally objected to a perceived intrusiveness by DOE. These included remarks questioning DOE's authority to judge performance (rather than simply determining if funds were spent properly), disputing the need for OCRWM concurrence with affected parties on grant applications, and questioning DOE's need to have and evaluate information about recipients projected financial assistance requirements for 3-year periods. One commenter requested that the focus of grantee public information programs be made less restrictive by changing the word "should" to "may" (OGR, p. 13). One commenter said that OCRWM should add a provision explicitly calling for review and/or audits to ensure that funds are spent for the intended purpose.

Response

DOE has a fiduciary responsibility to manage the Nuclear Waste Fund; reviews and audits to ensure proper expenditure of funds (contained in 10 CFR 600.300), as well as OCRWM concurrence on grants, are necessary for that reason and because these are regulatory requirements. Three-year projections are required by the Congressional budget process for all OCRWM budgets and were specifically requested on OCRWM grants by budget reviewers from OMB. The use of the word "should" instead of "may" in the public information program discussion reflects the language of the NWPA.

11/20/86

COOPERATIVE AGREEMENTS

Cooperative agreements are included in the OCRWM guidelines as a means of funding certain activities that do not fit within the scope of grants and financial assistance provided by the NWPA. One commenter noted that it is inappropriate to discuss this other funding mechanism within the grant and payment assistance guidelines. The commenter also objected to the words "for the direct benefit of OCRWM" (OCRWM, pp. 14 and 15) and said that the terms of the agreements should be interpreted for the benefit of affected parties. Another commenter said that affected parties, not OCRWM, should determine what organizations represent them when DOE uses cooperative agreements to obtain services from national and regional organizations. A commenter pointed out the conflict between the first page of the OCRWM document which states that the guidelines do not apply to cooperative agreements and pages 14 and 15, where these agreements are discussed.

Response

A new chapter on cooperative agreements is included in the revised guidelines. The comments on these agreements are noted and are taken into consideration in the new chapter of the revised guidelines.

CONSULTATION AND COOPERATION AGREEMENTS

Several comments were made about funding for Consultation and Cooperation (C&C) agreement activities. A few commenters noted that the list of activities on page 8 of the OCRWM guidelines (under "Participation Grants") is not all-inclusive and should contain the words "but are not limited to." Several commenters stated that activities authorized by a C&C agreement should be eligible for funding even if they are not listed in Section 118(b) of the NWPA.

Response

The list of activities was not intended to be all-inclusive. Consequently, the words "but are not limited to" are added. Activities within the NWPA mandate are included. Activities authorized by a C&C agreement will be considered eligible for funding even if not listed in NWPA Section 118(b).

LEGAL ISSUES

Many comments were received concerning OMB policy on the funding of legal expenses. Many commenters requested that references to OCRWM's intent to follow the policy be deleted pending the outcome of the current litigation. Two commenters stated that the funding of legal expenses is unduly restricted and thus is inconsistent with [unspecified] prior DOE announcements as well as

Section 118(b)(2)(A)(i) of the NWPA. One commenter requested that DOE define the term "prosecution of claims" (OCRWM, p. 22) and asked for guidance on the allowability of legal expenses during the judicial review phase of site selection.

One commenter argued that reference to OMB Circular A-87 in the guidelines should be deleted since the relevance of this circular to the NWPA is being challenged in the courts.

Response

The are no provisions in the NWPA which preempt, override or otherwise invalidate any provisions of OMB circular A-87.

NON-DEPARTMENT OF ENERGY EVALUATORS

A few comments were made about DOE's selection of evaluators. Another said more non-DOE evaluators should be used. A third commenter requested that States and Tribes be notified before outside evaluators are selected.

Response

DOE has amended the section concerning the use of non-DOE evaluators.

REVIEW AND NEGOTIATION OF FINANCIAL ASSISTANCE

One commenter suggested deleting the words "minimum" and ". . . for reporting on progress and expenditures of grant-funds as they qualify the role of DOE's Financial Assistance Rules. In addition, the commenter added that the Project Offices should be given real authority to negotiate in good faith with grant applicants.

Response

The Department maintains that DOE's Financial Assistance Rules, 10 CFR Part 600, merely establishes the minimum administrative requirements for grantees and retains the right to impose additional conditions or requirements as circumstances warrant. However, the Department acknowledges that the purpose of these rules is not limited to "reporting on progress and expenditures of grant funds." Consequently, the latter quotation has been deleted. Project Offices currently have sufficient authority to negotiate in good-faith with grant applicants, subject to Headquarters concurrence.

ROLES IN NEGOTIATION AND DISPUTE RESOLUTION

Some comments were about the roles of DOE Headquarters, the Financial Assistance Review Board (FARB), DOE Project Offices, the Financial Assistance Appeals Board, and grant applicants. Some of these related to the negotiation and dispute resolution process. One commenter requested that the role of the DOE Project Office be expanded to include making a recommendation to DOE Headquarters regarding concurrence on an application. The need for a pre-award dispute resolution procedure within DOE was discussed. One commenter suggested streamlining the negotiation process by making DOE Project Office negotiators a part of the FARB. The commenter also asked if DOE Headquarters could negotiate directly with a grant applicant.

Response

A pre-award appeal or dispute resolution process is now added whereby an appeal can be made first to the appropriate DOE project office manager. If not resolved, the appeal can go to the appropriate DOE associate director (e.g., the associate director for OGR). If necessary, the appeal may go then to the director of OCRWM The FARB is not involved in the negotiation process. The FARB will consist of the OCRWM executive committee (the OCRWM director and associate directors). DOE Headquarters does not negotiate directly with the grant applicants, except in the case of the dispute resolution procedure described above. Language has been added to reflect that the Project Office makes a recommendation to DOE Headquarters regarding concurrence on grant applications.

MISCELLANEOUS COMMENTS

Following are several individual comments and responses that did not fit within the categories.

Comment

Do the guidelines also apply to modification of existing grants? (OCRWM, p.2, Section I, last paragraph)

Response

Yes.

Comment

On the draft OCRWM guidelines, page 2, item 2 in Section II, delete "application" and insert "implementation."

Response

This change is made in the revised guidelines.

Comment

Policy guidance is needed for site-specific activities not conducted within the particular State/Tribal jurisdiction. (OCRWM, pp. 10-11, PETT)

Response

This section is changed in the revised guidelines.

Comment

Add a provision for predetermining the allowability of costs proposed to be incurred, perhaps through the auspices of an independent panel.

Response

If there is any question regarding the allowability of certain costs, the appropriate contracting officer at DOE should be contacted and consulted before the costs are incurred.

Comment

On the draft OCRWM guidelines, page 24, third paragraph, delete "if relevant" (line 5) and insert "approve the grant" after "action" (line 8).

Response

These changes are made in the revised guidelines.

Comment

In the draft OCRWM guidelines, page 23, Section A.1, add the sentence "Notification to affected tribes and states should be made if grant applications are referred to the FARB, including a description of the recommendations of the board."

Response

This change is made in the revised guidelines.

11/20/86

OCRWM COMMENTS

FUNDING OF TRANSPORTATION ACTIVITIES

Reactions to the description of funding for "Transportation Activities" (in "Other Funding Mechanisms," OCRWM, p. 15) were generally related to the need to provide funding for non-host states and tribes along the transportation corridors.

Response

Transportation activities funding is now a separate chapter and will be opened for comment during the formal review process.

OMISSIONS

Two omissions were noted. One was Table 1, and the other was a reference or description of the "other applicable law" on page 2 of the OCRWM document.

Response

Table 1 is being provided. A reference to the "Authorities" section is included to define "other applicable law."

REQUESTS FOR CLARIFICATION

A number of requests for clarification were made. One asked for clarification of "equitable" in item 3, page 3, of the OCRWM guidelines. A definition of "other major facets of financial assistance efforts" was requested (OCRWM, p. 16, item 3). For item 1.d on page 18 of the OCRWM guidelines, a description of the "system" was requested. Finally, many comments were made on pages 20 and 21 of the OCRWM guidelines. Several additions and clarifications were requested on the description of criteria for evaluating applications.

Response

These clarifications have been made in the revised guidelines.

DATA FROM GRANTEE'S STUDIES

Several comments were made on page 9, item C, of the OCRWM guidelines' listing activities for which States and Tribes may receive funding. This item states that data from the grantees' studies should meet quality assurance standards and shall be made available to DOE. Some commenters called this "excessive," "too all-encompassing," a burden not required by the NWPA, not subject to the Freedom of Information Act, and inconsistent with the Federal Grant and Cooperative Agreement Act. Two commenters suggested that this request for data would be better handled by a cooperative agreement or the grant itself.

Response

The reference to meeting quality assurance standards has been deleted. It is expected that grants will contain a requirement that data be provided as a part of the Licensing Support System (LSS). Procedures for determining if data is proprietary, the circumstances under which data will be provided, and procedures for protecting confidentiality will be negotiated between DOE and the applicants.

OGR COMMENTS

RELATED PROGRAMS AND ORGANIZATIONS

Two commenters stated that the guidelines overly restricted the DOE repository program. One commenter noted that because affected parties are interested in other agencies (e.g., DOT, EPA, BIA, DOI, environmental groups, etc.) with responsibilities related to the program, the public information efforts should not focus only on DOE's repository program. Another noted several places where the phrase "related only to the repository program" was used; the commenter said the phrase is needlessly restrictive and should be eliminated or clarified.

Response

DOE recognizes the concerns in this area, and is making efforts to minimize the perceived over-restrictiveness of the guidelines. However, DOE also finds that the "repository program" is the proper focus for the guidelines and should not be liberalized.

CONSTRAINTS ON STATE/INDIAN TRIBE OVERSIGHT FUNCTIONS

Some of the commenters suggested that the qualification that the requirements for the transportation, defense-waste; and MRS reports should be related to the repository program unduly restrains the oversight functions of the States/Indian Tribes. In addition, the requirement that grantees must be aware of DOE's activities or plans for activities in the particular area of study and that funding should be used to address concerns regarding those activities is unnecessary and may impede States/Indian Tribe reviews and other activities. Commenters also objected to use of the word "balance" when evaluating the needs of different States and Indian Tribes on the grounds hat its use may be inappropriate.

Response

As stated earlier in this document, DOE has a fiduciary responsibility to manage the Nuclear Waste Fund; reviews and audits to ensure proper expenditure of funds, as well as OCRWM concurrence on grants, are necessary for that reason and because these are regulatory requirements.

REPORTS FOR IMPACT ASSISTANCE REQUEST

One commenter argued that the requirement for the impact report to be submitted following completion of site characterization and before the Secretary's recommendation of a site to the President for the location of a repository is ambiguous and should be deleted.

Response

The Department agrees that the language may have been ambiguous and has made changes to directly conform with the language in the NWPA.

DRAFT MEMORANDUM FROM STEPHEN KALE TO POS DELINEATING GRANT CONDITION FOR LSS

Special Grant Condition on Data and Reports

TO: J. Neff

- J. Anttonen
- D. Vieth

Now that the program has reached the site characterization phase, States and Indian Tribes will be engaging in some primary data collection activities. It is necessary that data and reports produced or generated under the grants which may be utilized in the repository licensing process be made available to the Department for inclusion in the Licensing Support System (LSS). Existing regulation, 10 CFR 600.115, authorizes the Department to require such reporting.

In order to ensure inclusion of this material in the LSS prior to implementation of the provisions of the negotiated rulemaking to be conducted by the NRC on use of the LSS, the following condition should be included in all future grant awards:

"The Department of Energy requests that data summaries, interpretations, and reports resulting from the grantees' technical studies in transportation, socioeconomics, and geoscience field testing be provided to the Department. This information should be provided from the point at which a determination is made that the information meets the basic requirements of the grantee and is suitable for general use, but should not be provided less frequently than on a quarterly basis. DOE will include this information in the Licensing Support System (LSS). In order to facilitate the inclusion of this information in the LSS, the information must be provided in the following format:

Text Records: (Provide both of the following items)

- o Computer readable files in ASCII format for all text material, accompanied by a text description of the contents of the record and the computer hardware and operating system used to create it.
- o Clean paper copy with all signatures.

Non-Text Records: (Provide one of the following items, as appropriate)

- o For copyable records:
 - A consolidated copy of the record accompanied by a text description of the record, contents, source, date of generation, and any information required to read or interpret the record.
- o For non-copyable records:
 - A text description of the contents of the record, storage location, how to contact the records custodian, record source, and date of certification."

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

OUTREACH COMMITTEE

- o Status Summary of Participation Plans
- o PO and State comments on HQ Review Criteria
- o February 12, 1987 memorandum from S. Kale Responding to PO Comments
- o DOE/HQ Draft SCP Outreach Plan Summary
- o Original and revised agendas for Spokane Quarterly Meeting
- o February 24, 1987 letter from J. Leahy to States and affected Indian Tribes

FACILITY-SPECIFIC OUTREACH AND PARTICIPATION PLANS: SUMMARY OF STATUS

STATUS SUMMARY

FACILITY-SPECIFIC OUTREACH AND PARTICIPATION PLANS

Purpose of Participation Plans

- O As specified in the Mission Plan, DOE is developing Facility-Specific Outreach and Participation Plans that describe DOE activities for informing and involving State, Indian Tribe, and local parties at each site.
- o The participation plans are intended to:
 - define the basic institutional activities that will be conducted with affected parties at all three sites, including regular meetings such as the OGR coordinating group meetings;
 - define the site-specific institutional activities that will be tailored to the needs of the State, Indian Tribe and local parties; and
 - document DOE's efforts to facilitate the participation of State, Indian Tribe, and local parties in the program.

Content of Participation Plans

- o The participation plan for each site will define the institutional program that will inform and involve affected parties, including:
 - ongoing interactions such as regular meetings between DOE and the affected parties; and
 - activities related to the technical program milestones such as Site Characterization Plans and Monitoring and Mitigation Plans.

Role of Project Offices

- o To develop the participation plan, each Project Office will hold meetings with State, Indian Tribe, and local parties to discuss what information and interactions will serve their needs.
- o After these meetings with affected parties, each Project Offices will develop a draft participation plan, provide the draft plan to Headquarters for review, revise the draft to incorporate Headquarters comments, and then discuss the draft with affected parties.

Headquarters Review Criteria

- o Headquarters Review Criteria for the draft participation plans have been drafted and distributed to Project Offices and affected parties for comment.
 - The December OCRWM Bulletin included an article about the Review Criteria.
 - The draft Review Criteria were discussed at the December ISCG meeting, and comments have been received from the Project Offices and from affected parties.
 - The Headquarters responses to comments are included in the reference package for discussion at this ISCG meeting. (See S.Kale memorandum to Froject Managers and B.Gale letter to R.Loux.)

o The Review Criteria define the institutional activities that are basic to the repository program, including the technical activities and milestones for which interactions with affected parties are necessary.

Schedule for Release of Participation Plans

- o The OGR Guidelines for Intergovernmental and Public Paricipation Activites specify that the participation plans are to be completed six months after planning is initiated.
- o Flexibility regarding schedule is likely to be necessaryto ensure a successful process. The schedule for each participation plan will be developed as the Project Offices meet with affected parties.

Next Steps

o While revisions to the draft Headquarters Review Criteria are being completed over the next few months, the Project Offices will be holding participation plan discussions with affected parties and preparing the draft participation plans.

2

PO AND STATE COMMENTS ON HQ REVIEW CRITERIA



Department of Energy Chicago Operations Office Salt Repository Project Office 505 King Avenue Columbus, Ohio 43201-2693 Commercial (614) 424-5916 F.T.S. 976-5916



February 9, 1987

Stephen H. Kale, Associate Director Office of Geological Repositories, HQ RW-20

SUBJECT: COMMENTS ON HEADQUARTERS REVIEW CRITERIA FOR FACILITY-SPECIFIC OUTREACH AND PARTICIPATION PLANS (FSOPP)

We appreciate having the opportunity to comment again on the proposed "Headquarters Review Criteria for Facility-Specific Outreach and Participation Plans," draft dated November 19, 1986. Our comments are both general and specific. Specific comments are provided on the attached copy of the draft review criteria; our general comments are as follows:

- 1. As was pointed out at the ISCG meeting in Las Vegas, creating a title for anything that results in an acronym with SOP in it should not happen.
- 2. While we recognize the value for OGR staff to have some mechanism to assure a consistent, trackable review process, we question the need for such internal criteria to be reviewed by the project offices, much less the states and tribes in joint sessions. Providing these for information would seem more appropriate.
- 3. The criteria have been developed and will be applied long after the fact. Project offices began developing their public participation plans or processes more than a year ago, and we agree with NNWSI that imposing such criteria now can create contradictions and affect understandings already in existence with states and local people.

- 4. Expanding on Point 3, the chart of activities has many problems, including the appearance of micromanagement, conflicts with our process to develop a chart commonly agreed to with the public, and a list of documents or activities with questionable possible public participation advantages. We have marked the charts with many specific examples, but would prefer that the charts themselves be eliminated from your criteria.
- 5. References to imposing equity across the projects should be eliminated or caveated (see below). Needs of the projects are vastly different in this area, as are the possible desires of state and local people with whose input the plans will be developed.
- 6. The criteria seem overbalanced in references to state and tribal interactions. We view this as <u>public</u> outreach and participation. Interactions with states and tribes are covered by working understandings and eventually the consultation and cooperation agreements. We plan to include references to the state only in terms of their review of an understanding of our process to develop a participation plan with local people.
- 7. The criteria do not reflect any recognition of how we plan to develop the draft SRP plan. As your staff knows from reviewing the process document months ago, we will develop the SRP public participation plan in three steps: (1) technical staff list activities and public input points, (2) local people list activities they want to be involved in and how, and (3) the two lists are merged and differences accommodated. Obviously there will be give and take throughout the process. And, as I stated in my letter to OGR dated October 2, 1986, on this subject, once our plan is drafted, it will greatly reduce DOE credibility and trust to have provisions we agreed to reversed by another DOE office. Your criteria and especially the checklist of activities imply a level of scrutiny that we strongly feel will result in reversals.

In summary, I would like to reiterate the position in my October letter, that as an alternative to finalizing review criteria, you provide guidance in areas you anticipate to be problematic or that are important in terms of equity across the projects (e.g., required reviews, hearings, availability of raw data, site visits, etc.) to set some limits as the project offices engage in the process leading to public participation plans.

If you have any questions about these general comments or specific notes on the enclosed draft criteria, please contact Linda McClain or me.

J.O. Neff

Project Manager

Salt Repository Project Office

SRPO:LKM:max:2067JD

cc: C. Peabody, RW-223

R. Gale, RW-223

W. Probst, RW-223

B. Gale, RW-223

IN# 050-87



Department of Energy

Nevada Operations Office P. O. Box 14100 Las Vegas, NV 89114-4100

NOV 26 1986

Barry G. Gale, Office of Geologic Repositories, DOE/HQ (RW-223) FORS ATTN: Carol Peabody, DOE/HQ (RW-223) FORS

COMMENTS ON "INSTITUTIONAL ACTIVITY CHECKLIST FOR DEVELOPMENT OF HEADQUARTERS (HQ) FACILITY SPECIFIC OUTREACH AND PUBLIC PARTICIPATION PLAN (FSOPP) REVIEW CRITERIA

At the September 1986 ISCG meeting, you requested comments from Project Offices on the "Institutional Activity Checklist for Development of HQ FSOPP Review Criteria" contained in the reference package. We wish to express our regrets in the delay in providing our comments along with our concerns about the approach that appears to be contained in this outline.

We want to start by emphasizing that we agree that institutional considerations are essential to the success of the repository program. We applaud and support constructive efforts to sensitize Office of Civilian Radioactive Waste Management's (OCRWM) and Project Office's staffs to these vital considerations. However, we need to maintain a clarity of vision with respect to the objectives of the FSOPP, and reinforce the idea that it should be sharply focused on the known audience. We are concerned that the scope of the FSOPP has been expanded to serve as a management tool rather than a realistic, attainable description of DOE-State/Public interactions. The thought of broadening its scope to cover a multiplicity of purposes is not likely to be constructive, practical, or to accomplish the alternative goals.

Our approach to the FSOPP began with a review of the OCRWM Mission Plan requirements. We then analyzed the general Mission Plan language in the context of our four years' experience in dealing with the State of Nevada, local governments and the public. Then we made our best estimate of future DOE and affected party requirements in both intergovernmental and public arenas. The conclusion was that the NNWSI Project Outreach and Public Participation Plan should:

- o Develop a clear definition of the concept of "public participation," and explain "in what" the states and the public will be invited to participate;
- o Spell out the manner in which the NNWSI Project would do business with the State, local governments, and the public, based on discussions with these parties;
- o Encompass on-going, continuous activities that apply not only to major milestones but to routine interactions;
- o Avoid being overly bureaucratic and dictatorial in tone; and

o Be extremely careful to avoid raising affected parties' expectations by making commitments that cannot be kept.

It is our understanding that in developing the document you would like us to do the following:

'Negotiate' major milestone-based activities with affected parties.

2. Reach some type of agreement about what these activities should encompass.

Package this 'draft' agreement as an FSOPP.

4. Forward it to HQ for use in discussion with technical managers.

If our understanding is correct, we have several concerns about this approach.

We believe that the fundamental approach may be unworkable until two major areas are clarified. First, a reasonable understanding of the nature and concept of "public participation" is required. Until it is clear exactly what this means, it will be difficult to explain how the Project Office plans to conduct "participation." The repository program must come to grips with this basic question and provide guidance on how this activity should be defined. Based on our experience, we suspect that the public may best participate through its elected officials, through formal processes such as comments on major program documents and advisory committees, and through relatively limited feedback mechanisms during information meetings or briefings. However, we must still address how the State and local government representatives will participate in the program. We assume this document must also address this group of people.

Our second concern is the utilization of milestones as a basis for writing the document. We are puzzled about how we will involve the public or the local government officials in many of our major programmatic milestones. While it will be possible to explain how the State and public will participate by making formal comments on the Site Characterization Plan or in the scoping hearings for the EIS, it is difficult to understand how they should be involved in the review of the Exploratory Shaft Title II design, the readiness review prior to construction, the start of construction, or the completion of in situ testing, etc. While we recognize the importance of milestones as an indication of progress, their use as the focus of the public participation effort requires additional consideration. If you would share with us your ideas about what milestones you believe could serve as the basis for public participation, we will be pleased to develop a plan based on appropriate milestones. To assist this review, we have enclosed a list of nearly 300 NNWSI Project Level 1 and Level 2 milestones.

We have reviewed your draft list of FSOPP review criteria. Unfortunately, although the draft denotes factors to be included in the FSOPP, the basis for judging the adequacy of included factors is not indicated. It would be difficult to assess whether enough attention to detail has been given to meet OGR's expectations. It would be helpful if you could be more specific, if you could tell us not only "what" but "how much," so the Project Office could produce a sufficient document.

The draft review criteria indicates a substantial desire for detailed information in the draft FSOPPs. However, we must question whether the information requested will be relevant to each milestone or of value to the public. For example, consider the readiness review for the exploratory shaft, a milestone that we consider significant. After considering the proposed checklist, we have the following questions:

- o What data would be appropriate to share with the affected parties (the public)?
- o To whom should we provide copies of the draft readiness review checklist and criteria?
- o Is it really appropriate to notify State, Indian Tribes and local officials of this program activity?
- o Do we really expect to issue a press release and hold a press conference on this?
- o Do we really expect to conduct a site tour for such an activity?

Providing all the requested information about every milestone would no doubt make the plan complete and thorough. However it could also be overkill, and because of the excessive detail, it could miss the objective of communicating information about the points that are critical.

There is another aspect that is equally troubling. If we follow this approach, it would strongly imply that the public would be involved in a meaningful way. By this we mean there would appear to be commitment that the public could influence the outcome. It is not obvious to us that the technically inexperienced public could be meaningfully involved in milestones such as the ES readiness review, or even the start of ES construction. Another danger is inviting the public to participate in activities in a non-meaningful way; that is, they "participate" but they have no effect or influence. This would not be a reasonable proposal. Therefore, we come back to our basic question: "public participation in what?"

Finally, the issue of credibility is a paramount importance to the repository program. We believe the State of Nevada would negotiate or seriously review all of these milestones only if the State was guaranteed that the effort would produce tangible results. At the very least, such discussion would raise expectations that results would be forthcoming. We do not feel that we, in good faith, could provide such a guarantee. To proceed as proposed, despite our misgivings, could have serious ramifications on our somewhat battered, but still functioning, working relationship with the State. For this reason it would be important to understand from a policy viewpoint the milestones the Project should be willing to negotiate over in the development of the plan.

In summary, we believe that we need to seriously reconsider the content and objective of the FSOPP. We strongly believe that the document needs to be "activity oriented" by outlining how people, both government representatives as well as the public, can participate meaningfully in our activities. The activities that need to be discussed in the plan are ones that provide the opportunity to truly influence the course of the program. Offering token "participation" in activities that offer no opportunity to influence the program could be considered a sham. We strongly believe that a document with

this potential interpretation would not be beneficial to the projects or to the program. With regard to this point, you might want to reflect on ideas developed and presented to the public in the State of Nevada by Jim Creighton. We, as you, are eager to build program credibility through meaningful interactions with affected parties, and we hope to use the NNWSI Project Outreach and Public Participation Plan as our outline.

Donald L. Vieth, Director Waste Management Project Office

WMPO:DLV-455

Enclosure: As stated

cc w/encl:

S. M. Volek, SAIC, Las Vegas, NV B. E. Reilly, SAIC, Las Vegas, NV V. J. Cassella, DOE/HQ (RW-222) FORS

C. L. West, OPA, DOE/NV
W. R. Dixon, WMPO, DOE/NV
E. L. Lundgaard, WMPO, DOE/NV



AGENCY FOR NUCLEAR PROJECTS NUCLEAR WASTE PROJECT OFFICE

Capitol Complex
Carson City, Nevada 89710
(702) 885-3744

January 22, 1987

Mr. Barry Gale
Office of Civilian
Radioactive Waste Management
Forrestal Building
1000 Independence Avenue, S.W.
Washington, DC 20585

Attention: Carol Peabody

Dear Mr. Gale:

SUBJECT: COMMENTS BY NEVADA NUCLEAR WASTE PROJECT OFFICE ON DEVELOPMENT OF DOE/HQ FACILITY SPECIFIC OUTREACH AND PUBLIC PARTICIPATION PLAN (FSOPP) REVIEW CRITERIA

Although the eventual HQ FSOPP plan will be designed to blanket the three potential repository sites, the Nevada Nuclear Waste Project Office (NWPO) will be concerned with how it applies specifically to Yucca Mountain activities. For several years, the issue of locating a repository has drifted around the country. Now that it has narrowed to the site characterization phase, NWPO is concerned that a HQ FSOPP plan could restrict interaction between the State of Nevada and the Nevada Nuclear Waste Storage Investigations (NNWSI) Project Office. HQ should give NNWSI broad authority to negotiate with NWPO to devise an outreach plan that will meet the particular needs of the Nevada public.

NWPO generally agrees with comments offered at the December ISCG meeting in Las Vegas. Certainly, there must be a clear definition of "public participation" that will explain "how and in what" the State and public will be asked to participate. There will be major milestones warranting extensive media contact and hearings at which DOE will explain and the public will comment. There will be other, perhaps technical milestones, that can be explained in small meetings between NNWSI and NWPO, leaving to their individual discretion the level of public information.

NWPO believes public participation must be meaningful. If it has no effect on an indicated activity, participation is

pointless. To have credibility, public participation must be conducted under the premise that it can influence the outcome. Concerning the FSOPP, this again raises the question of "how and in what" the public will participate.

In summary, NWPO believes that NNWSI should have considerable freedom in drawing up the FSOPP as it pertains to Yucca Mountain; that its negotiated agreements with NWPO should not be overturned by DOE/HQ; that there be clear definition of "public participation," and that NNWSI and NWPO maintain close contact concerning milestones and how their respective public affairs people will publicize them.

Should you have any questions or wish to discuss these issues, please do not hesitate to contact me.

Sincerely,

Robert R. Loux Executive Director

RRL/RN/sjc

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cc: Don Vieth

FEBRUARY 12, 1987 MEMORANDUM FROM
S. KALE TO PROJECT MANAGERS
RE: HEADQUARTERS REVIEW CRITERIA FOR FACILITY-SPECIFIC
OUTREACH AND PARTICIPATION PLANS

memorandum

- DATE: FEB 1 2 1987

REPLY TO ATTN OF: RW-223

SUBJECT: Headquarters Review Criteria for Facility-Specific Outreach and Participation Plans

- TO: J. Neff, SRPO
 - D. Vieth, NNWSI
 - J. Anttonen, BWIP

I appreciate the efforts of you and your staff to assist in the development of the Headquarters Review Criteria for Facility-Specific Outreach and Participation Plans (FSOPPs) through written comments and through the September and December ISCG discussions. The site-specific meetings between Headquarters and Project Office staff next month will be another opportunity to discuss the Review Criteria, the FSOPPs, and the interactions that will occur between DOE staff and affected parties as the FSOPPs are developed. To assist in that discussion, I would like to respond to some of the issues that have been raised.

FSOPP Scope

Some Project Office comments have indicated that clarification is needed on the scope of the FSOPPs. The Mission Plan and the OGR Guidelines for Intergovernmental and Public Participation Activities specify that the FSOPPs address the information and interaction needs of State, Indian Tribe, and local parties. The FSOPPs are intended to be comprehensive plans for the needs of all affected parties, not just local parties or the public, as Project Office comments suggest. The FSOPPs will document DOE's efforts to interact with all affected parties on major milestones in the repository program and on an ongoing basis.

FSOPP Development

Project Office comments have also indicated that clarification is needed on the PSOPP development process. The NNWSI comments (Nov. 26 memorandum from D. Vieth to B. Gale, attached) contain the following development process:

"It is our understanding that in developing the document you would like us to do the following:

- 1. 'Negotiate' major milestone-based activities with affected parties.
- 2. Reach some type of agreement about what these activities should encompass.
- 3. Package this 'draft' agreement as an FSOPP.
- 4. Forward it to HQ for use in discussion with technical managers."

The SRPO comments (Oct. 2 memorandum from J. Neff to B. Gale, attached) also refer to FSOPPs as an agreement:

"As you know, SRPO intends to develop the FSOPP-through interactions with the affected publics. We encourage HQ participation in these interactions at every level. Once the FSOPP is drafted, however, it will greatly reduce DOE credibility and trust to have provisions agreed to reversed by another DOE office."

FSOPPs are DOE plans, not agreements between DOE and affected parties. Both the Mission Plan and the OGR Participation Guidelines specify that FSOPPs are DOE plans for addressing the information and interaction needs of affected parties, as identified through informal discussions. The OGR Participation Guidelines specify in Section 6.2 that the draft FSOPPs, which are to be developed by the Project Offices after informal discussions with affected parties, are to be sent to Headquarters before being provided to affected parties. This process will help to avoid making commitments that cannot be kept, a concern that has been raised by the Project Offices and that is shared by Headquarters.

Milestone-Related Planning

In their comments, NNWSI stated that "If you would share with us your ideas about what milestones you believe could serve as the basis for public participation, we will be pleased to develop a plan based on appropriate milestones." The Draft Headquarters Review Criteria, which was distributed at the December 1986 ISCG meeting, contain the milestones that Headquarters has identified as basic for institutional activities.

As indicated in the scope section of the Review Criteria, the milestone checklists are not necessarily restrictive. If there are other milestones that affected parties want to add, Project Offices should determine whether to include those milestones and what institutional activities are appropriate. The FSOPP is a DOE plan, and, as with other DOE documents, DOE is responsible for the final content of the plan. The Review Criteria provide policy guidance on minimum milestones for inclusion in the plans.

<u>Definition of Public Participation</u>

NNWSI raises the issue of what role the public has in the program. We agree with NNWSI's position:

"Based on our experience, we suspect that the public may best participate through its elected officials, through formal processes such as comments on major program documents and advisory committees, and through relatively limited feedback mechanisms during information meetings or briefings.

However, we must still address how the State and local government representatives will participate in the program. We assume this document must also address this group of people."

The State, Indian Tribe, and local government officials who will be involved in the FSOPP development process represent the interests of the public.

Resources for FSOPP Development

Concerns have been expressed about the resources that will be required for development of the FSOPPs. We consider the FSOPPs to be a major repository program institutional activity that is essential to successfully implement our technical program activities. During the budget process, we specifically ensured adequate resources were identified in the FY '87 budget for the FSOPP development process.

I hope that I have clarified some of the important issues that have been raised concerning the FSOPP process. I would like to emphasize how much we appreciate the efforts of you and your staff in commenting on the HQ Review Criteria and look forward to working with you as your plans are developed. Please contact Barry Gale or Carol Peabody of my staff if you have further questions.

stephen Ho Kale

Associate Director for Geologic Repositories

Office of Civilian Radioactive Waste Management

Attachments

cc: L. McClain, SRPO

M. Powell, RL

E. Lundgaard, NNWSI

T. Isaacs, RW-22

J. Bresee, RW-22

B. Gale, RW-223

C. Peabody, RW-223

R. Gale, RW-40

J. Saltzman, RW-42

B. Easterling, RW-42

G. King, RW-43

G. Pitchford, CH

M. Talbot, RL

C. West, NNWSI

DOE/HQ DRAFT SCP OUTREACH PLAN SUMMARY

DOE/HQ DRAFT SCP OUTREACH PLAN SUMMARY

Notification and Public Comment Period

- o DOE will send notification letters to affected State and Indian Tribal officials, Members of Congress, Federal and State agencies, local governments, landowners, and State and Indian Tribal contacts from other nominated sites approximately 30 days prior to the release of each SCP.
- o A Federal Register Notice of Availability will be published on the day the SCP is issued (R Day). The Notice will also announce a 90-day public comment period following the release of the SCP.

Distribution of SCP (and possible SCP Summary)

- o DOE will distribute the SCP to affected State and Indian Tribal officials, Members of Congress, Federal and State agencies, public libraries, local governments, and landowners.
- o The SCP will be available to the public upon request.
- o An SCP Summary (if prepared), will be distributed to the above, and to members of the public.

Public Hearings

- o In accordance with Section 113(b)(2)(B) of the Nuclear Waste Policy Act, DOE will hold public hearings in the State containing the candidate site, during the 90-day public comment period.
- o A second <u>Federal Register</u> Notice, announcing the public hearings, will be published 30 days prior to the hearings.
- o DOE will consult with the affected States and Indian Tribes to determine the schedule and locations of the public hearings.

Comment Response

o DOE will review and formally respond to all comments on the SCP. The vehicle for responding to the comments has yet to be determined.

QUARTERLY MEETING AGENDAS

Quarterly Agenda Distributed by DOE

AGENDA QUARTERLY MEETING OF STATES AND INDIAN TRIBES Spokene, Washington February 12, 1987

Time	<u>Itea</u>	Responsibility	Purpose	Reference
8:30 a.m.	Welcome by DOE, States, and Indian Tribes	DOE, State, and Indian Tribal Officials	Welcome and introduce participants	
8:45	Purpose of meeting	Hoderator	Introduce purpose and format of meeting	
8:50	Review of commitments from Portland meeting	J. Bresee	Report on status of commitments	List of commitments
9:00	Coordinating group meetings	S. Rale	Provide information	Presentation on coordinating groups; Letters dated January 15, 1987, to States and Indian Tribes.
9:30	Mission Plan	R. Gale/S. Kale/ S. Rousso	Present overview of Draft Mission Plan Amendment	Mission Plan transmittal letters dated January 28, 1987; Draft Mission Plan Amendment
10:15	BREAK			
10:30	Mission Plan (continued)		Answer questions and provide clarifying information on the draft Amendment in order to assist parties in formulating their written comments	•
11:30	Public question and answer session	Moderator with DOE, State, and Indian Tribal Officials	Provide opportunity for the public to ask questions	
12:00 noon	LUNCR			
1:30	Licensing Support System	S. Kale	Provide information	Presentation on Licensing Support System
1:45	Activities prior to release of Site Characterization Plans	S. Kale	Provide information	Presentation on Site Characterization Plans

Quarterly Agenda Prepared by States and Affected Indian Tribes

SUGGESTED ORDER OF AGENDA ITEMS FOR STATES/TRIBES/DOE MEETING SPOKANE, WASHINGTON FEBRUARY 12, 1987

- 8:30 INTRODUCTIONS AND PRELIMINARY COMMENTS
- 9:00 COORDINATING GROUPS' ACTIVITIES
- 9:30 MISSION PLAN AMENDMENTS
- 10:30 BREAK
- 10:45 LICENSING SUPPORT SYSTEM ACTIVITIES
- 11:15 PUBLIC COMMENTS
- 12:00 LUNCH
- 1:30 GRANTS DISCUSSION
- 2:30 SITE CHARACTERIZATION PLAN (including review times)
- 3:15 BREAK
- 3:30 TRANSPORTATION
- 4:15 WRAP-UP
- 4:30 PUBLIC COMMENT

FEBRUARY 24, 1987

J. LEAHY LETTER TO STATES

AND AFFECTED INDIAN TRIBES

memorandum

/DATE: FEB 2 4 1987

REPLY TO

ATTN OF: RW-223

SUBJECT: Date and Location of Next Quarterly Meeting

TO: Distribution

Commitment Number 17 from the Quarterly Meeting of States and Indian Tribes in Spokane, Washington, calls for DOE to poll the States and Indian Tribes on their suggestions for the date and location of the next Quarterly Meeting. In Spokane, DOE proposed that the next Quarterly Meeting be held in Las Vegas, Nevada, in mid-May. In accordance with the above commitment, we are requesting your comments on this proposal.

Please forward to me by March 20 any comments or suggestions you may have on the location and date of the next Quarterly Meeting.

Judy Leahy

· Economic and Intergovernmental

Analysis Branch

Office of Civilian Radioactive Waste Management

cc:

- S. Kale, RW-20
- T. Isaacs, RW-22
- J. Bresee, RW-22
- B. Gale, RW-223
- R. Gale, RW-40
- J. Anttonen, BWIP
- J. Neff, SRPO
- D. Vieth, NNWSI

Distribution:

Harold Aronson, Yakima Indian Nation Hall Bohlinger, Louisiana William H. Burke, Umatilla Indian Reservation Louie Dick, Umatilla Indian Reservation Wendy Dixon, NNWSI Steve Frishman, Texas John Green, Mississippi Ron Halfmoon, Nez Perce Terry Husseman, Washington Russell Jim, Yakima Indian Nation Robert Loux, Jr., Nevada Linda McClain, SRPO Elwood H. Patawa, Umatilla Indian Reservation Max Powell, BWIP Max S. Power, Washington J. Herman Reuben, Nez Perce Melvin R. Sampson, Yakima Nation Patrick Spurgin, Utah David Stewart-Smith, Oregon Dept. of Energy