

COMPLIANCE DETERMINATION STRATEGY

RR0055 LAND OWNERSHIP AND CONTROL AND WATER RIGHTS

PRIMARY REGULATORY CITATION:

None

PASS ID OF THE COMPLIANCE DETERMINATION STRATEGY:

RR0055/NS0001

TYPES OF REVIEW:

Acceptance Review (Type 1)
Safety Review (Type 3)

RATIONALE FOR TYPES OF REVIEW:

Acceptance Review (Type 1) Rationale:

This Regulatory Requirement is considered to be License Application related because, as specified in the License Application content requirements of 10 CFR 60.21 and the Format and Content Regulatory Guide (U.S. Nuclear Regulatory Commission, 1990), it must be addressed by the DOE in its license application. Therefore, the staff will conduct an Acceptance Review of the License Application for this Regulatory Requirement.

Safety Review (Type 3) Rationale:

This regulatory requirement is related to radiological safety and waste isolation. Because this requirement is in 10 CFR Part 60, Subpart E, it is a requirement for which compliance is necessary to make a safety determination for construction authorization as defined in 10 CFR 60.31 (i.e., Regulatory Requirements in Subparts E, G, H, and I and 10 CFR 60.21). Control of access, both within and outside of the Controlled Area, will have a direct bearing on achievement of isolation. Therefore, the staff will conduct a safety review of the License Application to determine compliance with the Regulatory Elements of Proof for this Regulatory Requirement.

No independent analysis of data other than that presented in the License Application is required to demonstrate compliance with this requirement, thus a review type higher than type 3 is not appropriate.

REVIEW STRATEGY:

Acceptance Review (Type 1):

In conducting the acceptance review of the land ownership and controls and water rights, the reviewer should determine if the land descriptions and

detailed listings of land use controls presented in the license application are complete and in proper form. The reviewer should identify any encumbrances listed in the application and whether a clear description of how each will be addressed is included in the application.

The review of water rights should identify discussion of both the time period of operations and the period after permanent closure. All needed permits and transfers shall be clearly identified and if not already obtained, a schedule included.

The review of the description of access restricting controls should determine the presence of a conceptual design of monuments (final design to be described in detail in application for permanent closure). This review will not require detailed description and location for such monuments and markers and may be a cross reference to RR0024 (Markers) and the repository operation presentation.

The information in this section of the license application shall be cross referenced to data submitted under RR2003 (Adverse Condition - Human Activity Affecting Groundwater), RR2019 (Adverse Condition - Subsurface Mining), RR2020 (Adverse Condition - Drilling), and RR0024 (Markers).

Safety Review (Type 3):

In conducting the safety review, the reviewer will determine the correctness of the legal description and its conformance to other accepted methods of land description. The review should analyze for completeness the necessary Bureau of Land Management (BLM) Master Title Plats (MTP) for all sections contained within the controlled area to assure they identify existing (or proposed) title control and existing encumbrances. In addition, maps displaying relevant features within and outside the controlled area should be reviewed for appropriate notations and an analysis performed of data referenced in the application to ensure all controls proposed will be adequate. The reviewer shall identify the limits of the geologic repository operations area (GROA) and its relationship to the limits of the controlled area on MTP's, maps and diagrams, in order to aid the review of relevant and necessary controls to achieve isolation. If controls for the GROA are proposed by DOE to be different from those for the remainder of the controlled area, the extent of difference and the adequacy of the rationale shall be evaluated.

The review of controls proposed outside the controlled area should analyze the identification of limits of such area and the adequacy of the extent to which DOE proposes exercising jurisdiction. The reviewer should determine that existing rights and interests are adequately described, including a complete description of how they will be addressed.

The reviewer will assess the adequacy of the identification of all encumbrances currently located on the lands to be included in the controlled area and those existing outside the controlled area. A specific review of the potential impact of any encumbrance on the GROAs ability to achieve isolation shall be conducted. In addition, an assessment of the

plan for extinguishing or compensating for existing rights or interests shall be made. The reviewer will identify the applicant's presentation of both interests in land and interest in the mineral estate as well as established rights of use or servitude to the lands of the controlled area and surrounding lands. Because the regulations specify "encumbrances, if significant" and "appropriate controls", it will be necessary for the reviewer to evaluate the presentation of not only the existence of rights, but also the extent to which they may impact operations and isolation in order to evaluate the appropriateness of DOE's proposed actions. This evaluation will be coordinated with the assessment of compliance with the requirements of RR2019 (Adverse Condition - Subsurface Mining) and RR2020 (Adverse Condition - Drilling) relating to evidence of subsurface mining and drilling.

The reviewer will analyze the presentation of water rights determined to be necessary for operations and required to prevent adverse impact on isolation for adequacy and support of conclusions. The review of needed permits and transfers shall focus on those identified as well as those not already obtained and a determination that appropriate schedules have been included. The evaluation of information on water rights and water use in this section shall be cross referenced with data submitted under RR2003 (Adverse Condition - Human Activity Affecting Groundwater) for mutual support and overlap.

The review of the adequacy of the access restricting controls should evaluate the conceptual design of monuments to be detailed for permanent closure for completeness. The reviewer will not require a detailed description and location for such monuments and markers and the data may be presented in response to RR0024 (Markers) and located in Chapter 7, Conduct of Repository Operations of the application and cross referenced herein.

Contributing Analysts:

NRC Staff: Kathryn L. Winsberg

CNRA Staff: Stephen H. Spector

Dates of Analyses: 06/23/92

RATIONALE FOR REVIEW STRATEGY (OPTIONAL):

Not Applicable.

APPLICABLE REGULATORY ELEMENTS OF PROOF:

Type 3:

REOP

RR0055/EP0100

RR0055/EP0200

RR0055/EP0300
RR0055/EP0400

REFERENCES CITED:

1. U.S. Nuclear Regulatory Commission. Office of Nuclear Regulatory Research. 1990. Draft Regulatory Guide DG-3003, Format and Content For the License Application For the High-Level Waste Repository.