

**CENTER FOR NUCLEAR WASTE  
REGULATORY ANALYSES**

**ADMINISTRATIVE PROCEDURE**

Proc. AP-001

Revision 1

Page 1 of 7

Title

EVALUATION OF POTENTIAL CONFLICT OF INTEREST

**EFFECTIVITY AND APPROVAL**

Revision 1 of this procedure became effective on March 29, 1990. This procedure consists of the pages and changes listed below.

<u>Page No.</u>	<u>Change</u>	<u>Date Effective</u>
1 - 7	0	3-29-90

**SUPERSEDED** *By Revision 2, Chg. 0.  
1/7/93*

Supersedes Procedure No. AP-001 REV. 0

Approvals

Written By

*Wesley C. Patrzek*  
Wesley C. Patrzek

Date

*3/29/90*  
3/29/90

Cognizant Director

*John E. Latz*  
John E. Latz

Date

*3/29/90*  
3/29/90

CNWRA Form AP-1

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**EVALUATION OF POTENTIAL CONFLICT OF INTEREST**

1. INTRODUCTION

The need to avoid conflict of interest (COI) in technical assistance and research programs was a principal reason for establishing the Center for Nuclear Waste Regulatory Analyses (Center). (Contract No. NRC-02-88-005, Section C.1.1.2). Many prospective Center employees, other Southwest Research Institute (SwRI) personnel performing work in the Center, subcontractors, and consultants to the Center now have or have had contracts with the Department of Energy (DOE), its contractors, or other affected parties under the Nuclear Waste Policy Act as amended (NWPA). Prior and/or ongoing work on such contracts introduces the potential for real or perceived conflict of interest which could delay the high level waste (HLW) repository licensing program.

2. PURPOSE AND SCOPE

The purpose of this procedure is to provide fundamental criteria and a means for formally documenting Center management's evaluation of potential COI among current and prospective employees, other SwRI personnel performing work in the Center, subcontractors, and consultants to the Center. This will ensure that no real or perceived COI arises so that it is demonstrably clear that personnel and organizations supporting the Nuclear Regulatory Commission (NRC) in the licensing process are providing research results, technical assistance, and advice that are technically sound, objective, and impartial. This procedure is developed in the context of and meets the intent of the provisions of Attachment 14 to the Contract.

This procedure applies only to personnel and organizations who are or may become engaged in management, technical assistance, technical review, and research activities of the Center. It is first applied before an individual or organization is allowed to engage in activities of the Center, prior to employment for individuals solicited to join the core Center staff. Subsequently, it is applied whenever an individual or organization is considered for a significant reassignment which introduces a potential conflict of interest that was not previously considered.

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3. DEFINITIONS

Conflict of Interest - A relationship exists whereby an individual or organization has past, present, or immediately planned interests related to the work to be performed for the Center which: (1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (2) may result in its being given an unfair competitive advantage.

Party to the NWPAA - The Department of Energy, Nuclear Regulatory Commission, affected States and Tribes, and other agencies and organizations that the NWPAA acknowledges to have a direct role in licensing of a HLW repository and/or a Monitored Retrievable Storage (MRS) Facility.

Potential Conflict of Interest - A factual situation exists that suggests (indicates) that an actual conflict of interest may arise. The term "potential conflict of interest" is used to signify those situations which merit investigation prior to employment or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work - Any technical assistance, technical review, or research activity or management of such activity related to licensing of a HLW repository or MRS facility at any DOE-proposed site. Both past and current work are subject to COI evaluation.

4. RESPONSIBILITY

4.1 The President of the Center is responsible for promulgation of, revision of, and evaluation of compliance with this procedure. The President presides at meetings of the Committee to evaluate potential COI.

4.2 The Technical Director of the Center, in fulfilling responsibilities for identifying and allocating resources, is responsible for implementation of this procedure.

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4.3 The President, Technical Director, Director of Waste Systems Engineering and Integration, the cognizant Element Manager, and as appropriate, the Director of Washington Technical Support Office comprise the management committee for evaluating potential COI.

4.4 The cognizant Element Manager is responsible for identifying potential COI and preparing materials for use by the Committee in evaluating COI concerns.

5. CRITERIA

The following fundamental criteria form the basis for evaluating potential COI among prospective Center employees, other SwRI personnel performing work in the Center, subcontractors, and consultants to the Center. Note that although these criteria are worded in the past tense, they apply to both past and current work activities. If in the future individuals or organizations engage in activity that introduce a COI with assignments within the Center, they will be immediately excluded from further Center work in that area of conflict of interest.

5.1 Personnel and organizations shall not provide technical or policy reviews or advice on work they directly performed or for which they had management responsibility.

5.2 Personnel and organizations shall not develop or directly support development of NRC technical or policy positions that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party to the NWPAA other than the NRC.

5.3 Personnel and organizations shall not participate in any Center activity that is directly related to issues, positions, or decisions for which they have taken a position of advocacy for any party to NWPAA other than the NRC.

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- 5.4 Personnel and organizations may be utilized by the Center to conduct original research. Such original research may be in technical areas in which they directly performed work or for which they had management responsibility while employed by a party to the NWPAA other than the NRC. Since research of this nature constitutes original work, no conflict of interest is deemed to exist in such cases.
- 5.5 Personnel and organizations may be utilized to perform analyses and interpretations of data, including data which they may have directly acquired or had management responsibility for acquiring while employed by a party to the NWPAA other than the NRC, provided that the supporting work has been independently reviewed and approved by the NRC or its contractors, has been incorporated in a consensus standard, or has otherwise been independently determined to be acceptable.
- 5.6 Personnel and organizations may be utilized to develop or support development of technical criteria that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party to the NWPAA other than the NRC, provided that the supporting work has been independently reviewed and approved by the NRC or its contractors, has been incorporated in a consensus standard, or has otherwise been independently determined to be acceptable.
- 5.7 Personnel may only be utilized to perform work, provide aid, counsel, or assist in representing the Center in any proceeding with regard to work they supervised or directly performed as an employee of the Nuclear Regulatory Commission (NRC), after their participation has been reviewed and approved by the Office of General Counsel, NRC under 10 CFR § 0.73526 and 18 U.S.C. 207. All former senior NRC employees (10 CFR § 0.73526[d]) shall be constrained by the specific one year prohibition.
- 5.8 Personnel and organizations may be utilized in such other activities of the Center as the Center management deems appropriate, with concurrence by the NRC CNWRA Program Manager.

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6. PROCEDURE

The following procedure will be used by Center management in evaluating potential COI. This procedure is applied both before an individual or organization first engages in activities of the Center and before any significant reassignment which introduces potential conflict of interest that was not previously considered.

A management committee comprising the President, Technical Director, Director of Waste Systems Engineering and Integration, the cognizant Element Manager, and, as required, the Director of the Washington Technical Support Office will perform the evaluations. The following steps will be followed:

- 6.1 An Element Manager identifies a required area of expertise and a prospective individual or organization to provide the expertise. This will typically occur during initial preparation or periodic modification of the Center Staffing Plan or individual Operations Plan. A need may also arise as a result of a special request from NRC or in response to a monthly reallocation meeting.
- 6.2 The Element Manager prepares and submits to the committee an evaluation portfolio containing:
  - a. Resumes and complete detailed work history of the prospective individual or organization.
  - b. Signed letter from the individual or organization attesting to the belief that he/she (it) is currently free from COI, intends to remain free from COI, and will notify the Center if he/she (it) undertakes other work which may give rise to a COI.
  - c. A completed COI Questionnaire (Form AP-001-01).
  - d. Brief but complete description of proposed work assignment.
  - e. Statement regarding the role of the work in issue resolution, policy evaluation, etc., in the context of the Program Architecture.

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f. Assessment of programmatic impact of not using prospect as proposed, including indication of available alternative personnel or organizations.

6.3 The Committee meets to evaluate the potential COI using the information provided in Section 6.2 and the criteria provided in Section 5. The President of the Center may delegate evaluation and preparation of a recommendation to a committee member, for final action by the committee as a whole.

6.4 In unusual cases, it will be desirable to engage the services of an eminently qualified individual or organization which has a COI. If the committee determines that the benefit to the Center and the NRC outweighs the negative effect of the COI, it will petition the NRC for a waiver. The NRC has sole discretion in granting such waivers on case-by-case basis.

6.5 The Committee prepares a brief report of their finding and transmits it to the Element Manager for action.

6.6 The Committee report and all supporting documentation is entered into the Center records management system as a permanent record.

CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES  
QUESTIONNAIRE FOR  
PRELIMINARY EVALUATION OF POTENTIAL CONFLICT OF INTEREST

Name: \_\_\_\_\_  
Social Security Number: \_\_\_\_\_

A. GENERAL BACKGROUND IN DOE ACTIVITIES.

1. Have you worked on activities directly or indirectly funded by the U.S. Department of Energy (DOE)? \_\_\_\_\_. List and describe your involvement, as appropriate (attached additional sheets, if necessary).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Have you worked on activities directly or indirectly funded by the DOE that were related to the commercial nuclear fuel cycle? \_\_\_\_\_. List and describe your involvement, as appropriate. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. BACKGROUND RELATED TO DOE HIGH-LEVEL WASTE ACTIVITIES.

3. Have you worked on activities directly or indirectly funded by the DOE that were related to the processing of defense or commercial high-level nuclear wastes into forms for subsequent disposal (such as borosilicate glass)? \_\_\_\_\_. List and describe your involvement, as appropriate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of developing a technical consensus or technical criteria, or of establishing a uniform methodology related to evaluation of HLW disposal? \_\_\_\_\_. List and describe your involvement, as appropriate. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of formulating policy? \_\_\_\_\_. List and describe your involvement, as appropriate. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Have you ever assumed a position of advocacy regarding issues, positions, or decisions of the DOE in matters related to the commercial nuclear fuel cycle, commercial high-level nuclear waste, or defense high-level nuclear waste? \_\_\_\_\_. List and describe your involvement, as appropriate. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Enumerate all of your activities and provide a list of all publications (attach an annotated list of publications from resume) which you have reason to believe could be used in supporting the DOE application to construct a repository in the tuffaceous rocks at Yucca Mt. in the state of Nevada. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. BACKGROUND RELATED TO HIGH-LEVEL WASTE ACTIVITIES OF OTHER AGENCIES.

8. Identify any work of the types listed in items 1 through 7 above which you performed for other parties to the Nuclear Waste Policy Act of 1982 as amended, including affected States, Tribes, and other groups which may have acted as advocates of or intervenors to the development of a HLW repository. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The information provided on this form is to the best of my knowledge true and accurate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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Revision 2

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Title  
Evaluation of Potential Conflict of Interest

**EFFECTIVITY AND APPROVAL**

Revision 2 of this procedure became effective on January 7, 1993 . This procedure consists of the pages and changes listed below.

<u>Page No.</u>	<u>Change</u>	<u>Date Effective</u>
ALL	0	January 7, 1993

**SUPERSEDED**

*Superseded by Revision 2, Change 1 - 1/23/94* <sup>AC 6/23/94</sup>

Supersedes Procedure No. AP-001, Revision 1

Approvals

Written By

W. Patrick

Date

1/5/93

Cognizant Director

H. Garcia

Date

1/7/93

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**EVALUATION OF POTENTIAL CONFLICT OF INTEREST**

1. INTRODUCTION

The need to avoid conflict of interest (COI) in technical assistance and research programs was a principal reason for establishing the CNWRA for Nuclear Waste Regulatory Analyses (CNWRA) (Contract No. NRC-02-88-005, Section C.1.1.2). Many prospective CNWRA employees, other Southwest Research Institute (SwRI) personnel performing work in the CNWRA, subcontractors, and consultants to the CNWRA now have or have had contracts with the Department of Energy (DOE), its contractors, or other affected parties under the Nuclear Waste Policy Act (NWPA), as amended. Prior and/or ongoing work on such contracts introduces the potential for real or perceived conflict of interest which could delay the high-level waste (HLW) repository licensing program.

2. PURPOSE AND SCOPE

The purpose of this procedure is to provide fundamental criteria and a means for formally documenting CNWRA management's evaluation of potential COI among current and prospective employees, other SwRI personnel performing work in the CNWRA, subcontractors, and consultants to the CNWRA. This will ensure that no real or perceived COI arises, or that the occurrence of such is effectively mitigated, so that it is demonstrably clear that personnel and organizations supporting the Nuclear Regulatory Commission (NRC) in the licensing process are providing research results, technical assistance, and advice that are technically sound, objective, and impartial. This procedure is developed in the context of and meets the intent of the provisions of the contract.

This procedure applies only to personnel and organizations who are or may become engaged in management, technical assistance, technical review, and research activities of the CNWRA. It is first applied before an individual or organization is allowed to engage in activities of the CNWRA, prior to employment for individuals solicited to join the core CNWRA staff. Subsequently, it is applied whenever an individual or organization is considered for a significantly different assignment which introduces a potential COI that was not previously considered.

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**3. DEFINITIONS**

Individual COI - A relationship exists whereby an individual has past, present, or immediately planned interests related to the work to be performed for the CNWRA which: (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (ii) may result in its being given an unfair competitive advantage.

Organizational COI - A relationship exists whereby an organization has current or future planned interests related to the work to be performed for the CNWRA which: (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or (ii) may result in its being given an unfair competitive advantage.

Party to the NWPA - The DOE, NRC, affected states and tribes, and other agencies and organizations that the NWPA acknowledges to have a direct role in licensing of a HLW repository and/or a Monitored Retrievable Storage (MRS) Facility.

Potential COI - A factual situation exists that suggests (indicates) that an actual COI may arise. The term "potential conflict of interest" is used to signify those situations which merit investigation prior to employment or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work - Any technical assistance, technical review, or research activity or management of such activity related to licensing of a HLW repository or MRS facility at any DOE-proposed site. Both past and current work are subject to COI evaluation.

**4. RESPONSIBILITY**

4.1 The President of the CNWRA is responsible for promulgation of, revision of, and evaluation of compliance with this procedure. The President presides at meetings of the COI committee to evaluate potential COI.

4.2 The Technical Director of the CNWRA, in fulfilling responsibilities for identifying and allocating resources, is responsible for implementation of this procedure.

4.3 The President, Technical Director, Deputy Technical Director for Waste Systems Engineering and Integration (WSE&I), the cognizant Element Manager, and as

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Title: Evaluation of Potential Conflict of Interest

**EFFECTIVITY AND APPROVAL**

Revision 2 of this procedure became effective on January 7, 1993  
This procedure consists of the pages and changes listed below.

<u>Page No.</u>	<u>Change</u>	<u>Date Effective</u>
1 - 3	1	06/27/94
4 - 10	0	01/07/93

**SUPERSEDED**

Supersedes Procedure AP-001 Revision 2, Change 0

Approval

Written By

Date

Cognizant Director

Date

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### 3. DEFINITIONS

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Organizational COI - A relationship exists whereby an organization has current or immediately planned interests related to the work to be performed for the CNWRA, including work for others, which: (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) may result in its being given an unfair competitive advantage, or (iii) may otherwise result in the CNWRA not being able to support future NRC activities under the NWPA due to a COI.

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Title Evaluation of Potential Conflict of Interest

**EFFECTIVITY AND APPROVAL**

Revision 2 of this procedure became effective on January 7, 1993. This procedure consists of the pages and changes listed below.

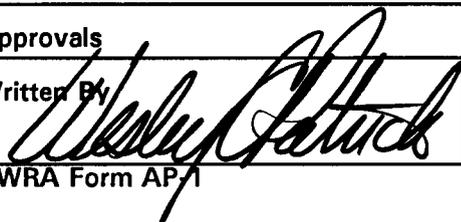
<u>Page No.</u>	<u>Change</u>	<u>Date Effective</u>
1	2	07/06/94
2	1	06/27/94
3	2	07/06/94
4 - 10	0	01/07/93

**SUPERSEDED** by Rev 3, Chg 0 dated 5/31/96

Supersedes Procedure AP-001 Revision 2, Change 1

Approvals

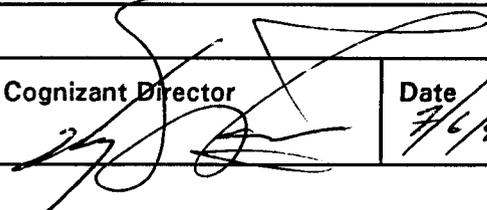
Written By



Date

7/6/94

Cognizant Director



Date

7/6/94

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**EVALUATION OF POTENTIAL CONFLICT OF INTEREST**

1. INTRODUCTION

The need to avoid conflict of interest (COI) in technical assistance and research programs was a principal reason for establishing the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Contract No. NRC-02-93-005, Section C.1.1.2). Many prospective CNWRA employees, other Southwest Research Institute (SwRI) personnel performing work in the CNWRA, subcontractors, and consultants to the CNWRA now have or have had contracts with the Department of Energy (DOE), its contractors, or other affected parties under the Nuclear Waste Policy Act (NWPA), as amended. Prior and/or ongoing work on such contracts introduces the potential for real or perceived conflict of interest which could delay the high-level waste (HLW) repository licensing program.

2. PURPOSE AND SCOPE

The purpose of this procedure is to provide fundamental criteria and a means for formally documenting CNWRA management's evaluation of potential COI among current and prospective employees, other SwRI personnel performing work in the CNWRA, subcontractors, and consultants to the CNWRA. This will ensure that no real or perceived COI arises, or that the occurrence of such is effectively mitigated, so that it is demonstrably clear that personnel and organizations supporting the Nuclear Regulatory Commission (NRC) in fulfillment of its mission under the NWPA are providing research results, technical assistance, and advice that are technically sound, objective, and impartial. This procedure is developed in the context of and meets the intent of the provisions of the contract.

This procedure applies only to personnel and organizations who are or may become engaged in management, technical assistance, technical review, and research activities of the CNWRA. It is first applied before an individual or organization is allowed to engage in activities of the CNWRA, prior to employment for individuals solicited to join the core CNWRA staff. Subsequently, it is applied whenever an individual or organization is considered for a significantly different assignment which introduces a potential COI that was not previously considered.

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### 3. DEFINITIONS

Individual COI - A relationship exists whereby an individual has past, present, or future planned interests related to the work to be performed for the CNWRA, including work for others, which: (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) may result in its being given an unfair competitive advantage, or (iii) may otherwise result in the CNWRA not being able to support future NRC activities under the NWPA due to a COI.

Organizational COI - A relationship exists whereby an organization has current or future planned interests related to the work to be performed for the CNWRA, including work for others, which: (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) may result in its being given an unfair competitive advantage, or (iii) may otherwise result in the CNWRA not being able to support future NRC activities under the NWPA due to a COI.

Party to the NWPA - The DOE, NRC, affected states and tribes, and other agencies and organizations that the NWPA acknowledges to have a direct role in licensing of a HLW repository and/or a Monitored Retrievable Storage (MRS) Facility.

Potential COI - A factual situation exists that suggests (indicates) that an actual COI may arise. The term "potential conflict of interest" is used to signify those situations which merit investigation prior to employment or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work - Any technical assistance, technical review, or research activity or management of such activity related to licensing of a HLW repository or MRS facility at any DOE-proposed site. Both past and current work are subject to COI evaluation.

### 4. RESPONSIBILITY

- 4.1 The President of the CNWRA is responsible for promulgation of, revision of, and evaluation of compliance with this procedure. The President presides at meetings of the COI committee to evaluate potential COI.
- 4.2 The Technical Director of the CNWRA, in fulfilling responsibilities for identifying and allocating resources, is responsible for implementation of this procedure.
- 4.3 The President, Technical Director, Deputy Technical Director for Waste Systems Engineering and Integration (WSE&I), the cognizant Element Manager, and as

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appropriate, the Director of Washington Technical Support Office comprise the management committee for evaluating potential COI. The Director of Quality Assurance serves as Secretary to this committee.

- 4.4 The cognizant Element Manager is responsible for identifying potential COI and preparing materials for use by the committee in evaluating COI concerns.

5. CRITERIA

The following fundamental criteria form the basis for evaluating potential COI among prospective CNWRA employees, other SwRI personnel performing work in the CNWRA, subcontractors, and consultants to the CNWRA. Note that although these criteria are worded in the past tense, they apply to both past and current work activities. If in the future individuals or organizations engage in activity that introduces a COI with assignments within the CNWRA, they will be immediately excluded from further CNWRA work in that area of COI.

- 5.1 Organizations shall not provide technical or policy reviews or advice on work they directly performed, for which they had management responsibility or which would result in them being given an unfair competitive advantage.
- 5.2 Personnel shall not provide technical or policy reviews or advice on work they directly performed or for which they had management responsibility.
- 5.3 Personnel and organizations shall not develop or directly support development of NRC technical or policy positions that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party to the NWPA other than the NRC.
- 5.4 Personnel and organizations shall not participate in any CNWRA activity that is directly related to issues, positions, or decisions for which they have taken a position of advocacy for any party to the NWPA other than the NRC.
- 5.5 Personnel and organizations may be utilized by the CNWRA to conduct original research. Such original research may be in technical areas in which they directly performed work or for which they had management responsibility while employed by a party to the NWPA other than the NRC. Since research of this nature constitutes original work, no COI is deemed to exist in such cases.

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- 5.6 Personnel and organizations may be utilized to perform analyses and interpretations of data, including data which they may have directly acquired or had management responsibility for acquiring while employed by a party to the NWPA other than the NRC, provided that the supporting work has been independently reviewed and approved by the NRC or its contractors, has been incorporated in a consensus standard, or has otherwise been independently determined to be acceptable.
- 5.7 Personnel and organizations may be utilized to develop or support development of technical criteria that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party to the NWPA other than the NRC, provided that the supporting work has been independently reviewed and approved by the NRC or its contractors, has been incorporated in a consensus standard, or has otherwise been independently determined to be acceptable.
- 5.8 Personnel may be utilized to perform work, provide aid, counsel, or assist in representing the CNWRA in any proceeding (with regard to work they supervised or directly performed as an employee of the NRC), only after their participation has been reviewed and approved by the Office of General Counsel, NRC, under 10 CFR § 0.73526 and 18 U.S.C. 207. All former senior NRC employees (10 CFR § 0.73526[d]) shall be constrained by the specific prohibitions in place at the time.
- 5.9 Personnel and organizations may be utilized in such other activities of the CNWRA as the CNWRA management deems appropriate, with concurrence by the NRC CNWRA Program Manager.

6. PROCEDURE

The following procedure shall be used by CNWRA management in evaluating potential COI, for considering mitigation of the effects of such potential COI, and for seeking waivers from the requirements of this procedure. This procedure will be applied both before an individual or organization first engages in activities of the CNWRA and before any significantly different assignment which introduces potential conflict of interest that was not previously considered.

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**A. EVALUATION**

A management committee comprising the President, Technical Director, Deputy Technical Director for WSE&I, the cognizant Element Manager, and, as required, the Director of the Washington Technical Support Office shall perform the evaluations. The following steps shall be followed.

- 6.1 An Element Manager will identify a required area of expertise and a prospective individual or organization to provide the expertise. This will typically occur during initial preparation or periodic modification of the CNWRA Staffing Plan or individual Operations Plan. A need may also arise as a result of a special request from NRC or in response to a reallocation meeting.
- 6.2 The Element Manager shall prepare and submit to the committee an evaluation portfolio containing:
  - a. Resumes and reasonably detailed work history of the prospective individual or organization.
  - b. Signed letter from the individual or organization attesting to the belief that he/she (it) is currently free from COI, intends to remain free from COI, and will notify the CNWRA if he/she (it) undertakes other work which may give rise to a COI.
  - c. A completed COI Questionnaire for Preliminary Evaluation of Potential Conflict of Interest, Form AP-001-01 (Figure 1).
  - d. Brief but reasonably complete description of proposed work assignment.
  - e. Brief statement regarding the role of the work in issue resolution, policy evaluation, etc., in the context of the Program Architecture.
  - f. Assessment of programmatic impact of not using the prospect as proposed, including indication of available alternative personnel or organizations.
- 6.3 The committee shall meet to evaluate the potential COI using the information provided in Section 6.2 and the criteria provided in Section 5. The President of the CNWRA may delegate evaluation and preparation of a

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**CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES  
QUESTIONNAIRE FOR PRELIMINARY  
EVALUATION OF POTENTIAL CONFLICT OF INTEREST**

Name: \_\_\_\_\_

Social Security Number: \_\_\_\_\_

**A. GENERAL BACKGROUND IN DOE ACTIVITIES**

1. Have you worked on activities directly or indirectly funded by the U.S. Department of Energy (DOE)? \_\_\_\_\_. Describe your involvement, including a brief description of the scope of work, listing of papers which resulted from such activities, as appropriate (attach additional sheets, if necessary).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Have you worked on activities directly or indirectly funded by the DOE that were related to the commercial nuclear fuel cycle? \_\_\_\_\_. Describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**B. BACKGROUND RELATED TO DOE HIGH-LEVEL WASTE ACTIVITIES**

3. Have you worked on activities directly or indirectly funded by the DOE that were related to the processing of defense or commercial high-level nuclear wastes into forms for subsequent disposal (such as borosilicate glass)? \_\_\_\_\_. Describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of developing a technical consensus or technical criteria, or of establishing a uniform methodology related to evaluation of HLW disposal? \_\_\_\_\_. Describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate. \_\_\_\_\_

\_\_\_\_\_  
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\_\_\_\_\_  
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CNWRA FORM AP-001-01

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5. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of formulating policy? \_\_\_\_\_. Describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Have you ever assumed a position of advocacy regarding issues, positions, or decisions of the DOE in matters related to the commercial nuclear fuel cycle, commercial high-level nuclear waste, or defense high-level nuclear waste? \_\_\_\_\_. Describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

7. Enumerate all of your activities and provide a list of all publications (attach an annotated list of publications from resume) which you have reason to believe could be used in supporting the DOE application to construct a repository in the tuffaceous rocks at Yucca Mt. in the state of Nevada.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**C. BACKGROUND RELATED TO HIGH-LEVEL WASTE ACTIVITIES OF OTHER AGENCIES**

8. Identify any work of the types listed in items 1 through 7 above which you performed for other parties to the Nuclear Waste Policy Act of 1982, as amended, including affected States, Tribes, and other groups which may have acted as advocates of or intervenors to the development of a HLW repository. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

9. If you have any work previously accomplished that was related to the Nuclear Waste Policy Act of 1982, as amended, you are requested to submit abstracts for Center review. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

The information provided on this form is to the best of my knowledge true and accurate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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recommendation to a committee member, for final action by the committee as a whole.

- 6.4 The committee shall prepare a brief report of their finding and transmits it to the Element Manager for action.

**B. MITIGATION AND WAIVER**

In unusual cases, it will be desirable to engage the services of an eminently qualified individual or organization which has a potential COI. The following steps shall be followed when such situations arise.

- 6.5 The committee shall make a determination based on the evaluations delineated in Sections 6.1-6.4 of this procedure whether the benefit to the CNWRA and the NRC outweighs the negative effect of the COI. If so, the Committee will propose administrative controls to mitigate the effect of such COI and will petition the NRC for a waiver from the requirements of this procedure. The NRC has sole discretion in granting such waivers on a case-by-case basis. The results of such determination shall be documented.

- 6.6 Proposed means to mitigate a potential COI may incorporate an appropriate combination of factors which include, but are not limited to: (i) independent review and approval of the work which creates the potential COI by the NRC or its contractors, (ii) incorporation of the work which creates the potential COI in a consensus standard, and (iii) acceptance of the work which creates the potential COI by the technical community, as may be demonstrated by its publication and favorable review or implementation in scientific or engineering practice. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC decisions. The results of such an NRC determination shall be documented.

- 6.7 For the special case of candidates for participation in peer reviews, advisory groups, or workshops, proposed means to mitigate a potential COI may incorporate administrative controls which include but are not limited to: (i) requiring full disclosure and documentation describing relationships, if any, with organizations or persons which may rise to actual or potential COI in the event of a contract/subcontract award, (ii) providing for a balance of differing technical perspectives in selection of peer review or workshop members, (iii) offsetting the potential COI through selection of a

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preponderance of members which have no COI, (iv) segregating the individual's comments to facilitate subsequent identification and evaluation of individual bias, (v) requiring individual expression of dissenting opinions, (vi) proscribing the individual from reviewing and commenting on particular portions of the subject matter, and (vii) controlling the end use of the results of such peer review or workshop so that it has no unacceptable programmatic impact. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC decisions. The results of such an NRC determination shall be documented.

- 6.8 When submitting a waiver request to the NRC, the CNWRA shall enclose a copy of the proposed statement of work for the candidate, individual or organization in question. In addition, the waiver request shall include the resume of the candidate/individual or, in the case of an organization, its current scope of work. Additionally, copies of titles of formal papers by the candidate/individual and the funding organization will be provided to the NRC. In the case of a waiver request for an organization, current and projected future work will be identified along with the funding organization, and a listing of relevant papers/articles which have been published under the company's name.

7. RECORDS

All items identified as documentation within this procedure shall be maintained as administrative records in accordance with SwRI procedures and shall be retained for six years, or as long as the individual or organization is in the employment of the CNWRA, which ever is longer.

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Title Evaluation of Potential Conflict of Interest

**EFFECTIVITY AND APPROVAL**

Revision 3 of this procedure became effective on May 31, 1996. This procedure consists of the pages and changes listed below.

<u>Page No.</u>	<u>Change</u>	<u>Date Effective</u>
All	0	May 31, 1996

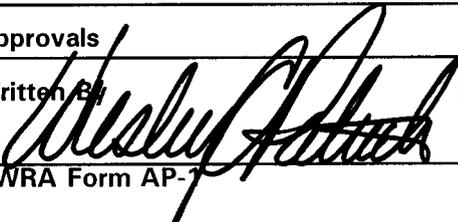
**SUPERSEDED**

*Superseded by Rev 4/Chg 0*

Supersedes Procedure AP-001 Revision 2, Change 2.

Approvals

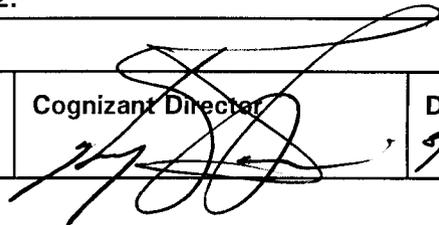
Written By



Date

5/31/96

Cognizant Director



Date

5/31/96

# CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES

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### EVALUATION OF POTENTIAL CONFLICT OF INTEREST

#### 1. INTRODUCTION

The need to avoid conflict of interest (COI) in technical assistance and research programs was a principal reason for establishing the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Contract No. NRC-02-93-005, Section C.1.1.2). Although initial concerns regarding COI were restricted to CNWRA work under the Nuclear Waste Policy Act (NWPA), similar concerns relate to CNWRA support to NRC in non high-level waste (HLW) programs. Many prospective CNWRA employees, other Southwest Research Institute (SwRI) personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA now or in the past have worked for the Department of Energy (DOE), its contractors, other affected parties under the NWPA, or other Nuclear Regulatory Commission (NRC) licensees and their contractors. Prior and/or ongoing work of this type introduces the potential for real or perceived COI which could delay or otherwise jeopardize NRC licensing activities.

#### 2. PURPOSE AND SCOPE

The purpose of this procedure is to provide fundamental criteria and a means for formally documenting CNWRA management evaluations of potential COI among current and prospective employees, other SwRI personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA. This will ensure that no real or perceived COI arises, or that the occurrence of such is effectively mitigated, so that it is demonstrably clear that the CNWRA, its staff, and all personnel and organizations used to support the NRC in fulfillment of its regulatory mission provide research results, technical assistance, and advice that are technically sound, objective, and impartial. This procedure is developed in the context of and meets the intent of the provisions of the contract.

This procedure applies only to personnel and organizations who are or may become engaged in management, technical assistance, technical review, and research activities of the CNWRA. It is first used before an individual or organization is allowed to engage in CNWRA activities, and prior to employment for the core CNWRA staff. Subsequently, it is applied whenever an individual or organization is considered for a significantly different assignment that may introduce a potential COI not previously considered.

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### 3. DEFINITIONS

Individual COI - A relationship exists whereby an individual has past, present, or future planned interests related to the work to be performed for the CNWRA, including work for others, which (i) may diminish his or her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) may result in him or her being given an unfair competitive advantage, or (iii) may otherwise result in the CNWRA not being able to support future NRC activities due to a COI.

NRC Licensee - A license applicant, potential license applicant, or their contractors responding to legislation or NRC regulations including but not limited to the NWPA, low-level waste (LLW) management, uranium recovery, and site decommissioning management plan programs.

Organizational COI - A relationship exists whereby an organization has current or future planned interests related to the work to be performed for the CNWRA, including work for others, which (i) may diminish its capacity to give impartial, technically sound, objective assistance and advise or may otherwise result in a biased work product, (ii) may result in its being given an unfair competitive advantage, or (iii) may otherwise result in the CNWRA not being able to support future NRC activities under the NWPA due to a COI.

Party to the NWPA - The DOE, NRC, affected states and tribes, and other agencies and organizations that the NWPA acknowledges to have a direct role in licensing of a HLW repository and/or a Monitored Retrievable Storage (MRS) Facility.

Potential COI - A factual situation exists that suggests (indicates) that an actual COI may arise. The term "potential conflict of interest" is used to signify those situations which merit investigation prior to employment or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work - Any technical assistance, technical review, or research activity or management of such activity related to licensing a HLW repository or MRS facility at any DOE-proposed site, or other NRC-regulated facility. Both past and current work are subject to COI evaluation.

### 4. RESPONSIBILITY

4.1 The President of the CNWRA is responsible for promulgating, revising, and evaluating compliance with this procedure. The President presides at meetings of the COI committee to evaluate potential COI.

4.2 The Technical Director of the CNWRA, in fulfilling responsibilities for identifying and allocating resources, is responsible for implementing this procedure.

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4.3 The President, Technical Director, Assistant Director for Systems Engineering and Integration (ADSE&I), the cognizant Element Manager, and as appropriate, the Director of Washington Technical Support Office comprise the management committee for evaluating potential COI. The Director of Quality Assurance serves as Secretary to this Committee.

4.4 The cognizant Element Manager is responsible for identifying potential COI and preparing materials for use by the Committee in evaluating COI concerns.

### 5. CRITERIA

The following fundamental criteria form the basis for evaluating potential COI among prospective CNWRA employees, other SwRI personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA to assure that CNWRA remains COI-free in its support to the NRC. Note that although these criteria are worded in the past tense, they apply to both past and current work activities. If in the future individuals or organizations engage in activity that introduces a COI with assignments within the CNWRA, they will be immediately excluded from further CNWRA work in that area of COI.

5.1 Organizations shall not provide technical or policy reviews or advice on work they directly performed, for which they had management responsibility or which would result in their being given an unfair competitive advantage.

5.2 Personnel shall not provide technical or policy reviews or advice on work they directly performed or for which they had management responsibility.

5.3 Personnel and organizations shall not develop or directly support development of NRC technical or policy positions that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party to the NWPA other than the NRC or by any other NRC licensee.

5.4 Personnel and organizations shall not participate in any CNWRA activity that is directly related to issues, positions, or decisions for which they have taken a position of advocacy for any party to the NWPA other than the NRC or for any other NRC licensee.

5.5 Personnel and organizations may be utilized by the CNWRA to conduct original research. Such research may be in technical areas in which they directly performed work or for which they had management responsibility while employed by a party to the NWPA other than the NRC or by another NRC licensee. Since research of this nature constitutes original work, no COI is deemed to exist in such cases.

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- 5.6 Personnel and organizations may be utilized to perform analyses and interpretations of data, including data which they may have directly acquired or had management responsibility for acquiring while employed by a party to the NWPAs other than the NRC or by another NRC licensee, provided that the supporting work has been independently reviewed and approved by the NRC or its contractors, incorporated in a consensus standard, or otherwise independently determined to be acceptable.
- 5.7 Personnel and organizations may be utilized to develop or support development of technical criteria that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party to the NWPAs other than the NRC or by another NRC licensee, provided that the supporting work has been independently reviewed and approved by the NRC or its contractors, has been incorporated in a consensus standard, or has otherwise been independently determined to be acceptable.
- 5.8 Personnel may be utilized to perform work, provide aid, counsel, or assist in representing the CNWRA in any proceeding (with regard to work they supervised or directly performed as an employee of the NRC), only after their participation has been reviewed and approved by the Office of General Counsel, NRC, under 10 CFR § 0.73526 and 18 U.S.C. 207. All former senior NRC employees (10 CFR § 0.73526[d]) shall be constrained by the specific prohibitions in place at the time.
- 5.9 Personnel and organizations may be utilized in such other activities of the CNWRA as the CNWRA management deems appropriate, with concurrence by the NRC CNWRA Program Manager.

### 6. PROCEDURE

The following procedure shall be used by CNWRA management in evaluating potential COI, for considering mitigation of the effects of such potential COI, and for seeking waivers from the requirements of this procedure. This procedure will be applied both before an individual or organization first engages in CNWRA activities and before any significantly different assignment that may introduce potential COI not previously considered.

#### A. EVALUATION

A management committee comprising the President, Technical Director, ADSE&I, the cognizant Element Manager, and, as required, the Director of the Washington Technical Support Office shall perform the evaluations. The following steps shall be followed.

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- 6.1 An Element Manager will identify a required area of expertise and a prospective individual or organization to provide the expertise. This will typically occur when developing or modifying the staffing section of the CNWRA Management Plan or individual Operations Plan. It may also occur as a result of a special request from NRC or in response to a reallocation meeting.
- 6.2 The Element Manager shall prepare and submit to the COI committee an evaluation portfolio containing:
- a. Resumes and reasonably detailed work history of the prospective individual or organization, as appropriate.
  - b. Signed letter from the individual or organization attesting to the belief that he/she (it) is currently free from COI, intends to remain free from COI, and will notify the CNWRA if he/she (it) undertakes other work which may give rise to a COI.
  - c. A completed COI Questionnaire for Preliminary Evaluation of Potential Conflict of Interest, Form AP-001-01 (Figure 1).
  - d. Brief but reasonably complete description of proposed work assignment.
  - e. Brief statement regarding the role of the work in issue resolution, performance assessment, policy evaluation, etc., in the context of the overall program.
  - f. Assessment of programmatic impact of not using the prospect as proposed, including indication of available alternative personnel or organizations.
- 6.3 The committee shall meet to evaluate any potential COI using the information provided in Section 6.2 and the criteria provided in Section 5. The President of the CNWRA may delegate evaluation of potential COI and preparation of a recommendation to a committee member, for final action by the committee as a whole.
- 6.4 The committee shall prepare a brief report of their finding and transmit it to the Element Manager for action.

**B. MITIGATION AND WAIVER**

In unusual cases, it will be desirable to engage the services of an eminently qualified individual or organization which has a potential COI. The following steps shall be followed when such situations arise.

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### CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL CONFLICT OF INTEREST

Name: \_\_\_\_\_ Social Security Number \_\_\_\_\_

#### A. GENERAL BACKGROUND RELATED TO DOE ACTIVITIES

1. Have you worked on activities directly or indirectly funded by the U.S. Department of Energy (DOE)? Yes/No If yes, describe your involvement, including a brief description of the scope of work, listing of papers which resulted from such activities, as appropriate (attach additional sheets, if necessary).

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2. Have you worked on activities directly or indirectly funded by the DOE that were related to the commercial nuclear fuel cycle? Yes/No If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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#### B. BACKGROUND RELATED TO DOE HIGH-LEVEL WASTE (HLW) ACTIVITIES

3. Have you worked on activities directly or indirectly funded by the DOE that were related to the processing of defense or commercial high-level nuclear wastes into forms for subsequent disposal (such as borosilicate glass)? Yes/No If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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4. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of developing a technical consensus or technical criteria, or of establishing a uniform methodology related to evaluation of HLW disposal? Yes/No If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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5. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of formulating policy? Yes/No If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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6. Have you assumed a position of advocacy regarding issues, positions, or decisions of the DOE in matters related to the commercial nuclear fuel cycle, commercial HLW, or defense HLW? Yes/No If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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7. Provide a complete list of all of your publications which you have reason to believe could be used in supporting DOE application to construct a repository in the tuffaceous rocks at Yucca Mountain in the state of Nevada (attach additional sheets as necessary).

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**C. BACKGROUND RELATED TO HLW ACTIVITIES OF OTHER AGENCIES**

8. Identify any work of the types listed in items 1 through 7 above which you performed for other parties to the Nuclear Waste Policy Act, including affected states, tribes, and other groups which may have acted as advocates of or intervenors to the development of a HLW repository (Attach additional sheets as necessary).

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**D. BACKGROUND RELATED TO OTHER NRC LICENSING ACTIVITIES**

9. Identify any work which you performed for a licensee for low-level waste disposal or contractor to such organization. Include work on low-level waste disposal facilities licensed directly by NRC or under Agreement State Provisions.

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10. Identify any work which you performed for a NRC licensee or license applicant, or contractor to such organization, including, but not limited to, uranium recovery and site decommissioning management plan projects.

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11. Have you accomplished any work related to the Nuclear Waste Policy Act or to other NRC-licensed activities or facilities? Yes/No If yes, you are requested to submit abstracts for the CNWRA review.

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The information provided on this form is to the best of my knowledge true and accurate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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- 6.5 The committee shall make a determination based on the evaluations delineated in Sections 6.1-6.4 of this procedure as to whether the benefit to the CNWRA and the NRC outweighs the negative effect of the COI. If so, the Committee will propose administrative controls to mitigate the effect of such COI and will petition the NRC for a waiver from the requirements of this procedure. The NRC has sole discretion in granting such waivers on a case-by-case basis. The results of such determination shall be documented.
- 6.6 Proposed means to mitigate a potential COI may incorporate an appropriate combination of factors which include, but are not limited to (i) independent review and approval of the work that creates the potential COI by the NRC or its contractors, (ii) incorporation of the work that creates the potential COI in a consensus standard, and (iii) acceptance of the work that creates the potential COI by the technical community, as may be demonstrated by its publication and favorable review of implementation in scientific or engineering practice. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC decisions. The results of such an NRC determination shall be documented.
- 6.7 For the special case of candidates for participation in peer reviews, advisory groups, or workshops, proposed means to mitigate a potential COI may incorporate administrative controls that include, but are not limited to (i) requiring full disclosure and documentation describing relationships, if any, with organizations or persons which may give rise to actual or potential COI in the event of a contract/sub-contract award, (ii) providing for a balance of differing technical perspectives in selection of peer review or workshop members, (iii) offsetting the potential COI through selection of a preponderance of members which have no COI, (iv) segregating the individual's comments to facilitate subsequent identification and evaluation of individual bias, (v) requiring individual expression of dissenting opinions, (vi) proscribing the individual from reviewing and commenting on particular portions of the subject matter, and (vii) controlling the end use of the results of such peer review or workshop so that it has no unacceptable programmatic impact. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC decisions. The results of such an NRC determination shall be documented.
- 6.8 When submitting a waiver request to the NRC, the CNWRA shall enclose a copy of the proposed statement of work for the candidate individual or organization in questions. In addition, the waiver request shall include the resume of the candidate/individual or, in the case of an organization, its current scope of work. Additionally, copies of titles of formal papers by the candidate/individual and the funding organization will be provided to the NRC. In the case of a waiver request for an organization, current and project future work will be identified along with the funding organization, and a listing of relevant papers/articles which have been published under the company's name.

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7. RECORDS

All items identified as documentation within this procedure shall be maintained as administrative records in accordance with SwRI procedures and shall be retained for six years, or as long as the individual or organization is in the employment of the CNWRA, which ever is longer.

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Title Evaluation of Potential Conflict of Interest

**EFFECTIVITY AND APPROVAL**

Revision 4 of this procedure became effective on March 27, 1998. This procedure consists of the pages and changes listed below.

<u>Page No.</u>	<u>Change</u>	<u>Date Effective</u>
All	0	03/27/98

**SUPERSEDED**

Supersedes Procedure AP-001 Revision 3, Change 0.

**Approvals**

Written by

*Wesley A. Stuts*

Date

3/27/98

Cognizant Director

*[Signature]*

Date

2/27/98

# CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES

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### EVALUATION OF POTENTIAL CONFLICT OF INTEREST

1. INTRODUCTION

The need to avoid conflict of interest (COI) in technical assistance and research programs was a principal reason for establishing the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Contract No. NRC-02-97-009, Section C.1.1.2 and other contracts). Although initial concerns regarding COI were restricted to CNWRA work under the Nuclear Waste Policy Act (NWPA), similar concerns relate to CNWRA support to NRC in non high-level waste (HLW) programs. Many prospective CNWRA employees, other Southwest Research Institute (SwRI) personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA now or in the past may have worked for the Department of Energy (DOE), its contractors, other affected parties under the NWPA, or other Nuclear Regulatory Commission (NRC) licensees and their contractors. Prior and/or ongoing work of this type introduces the potential for real or perceived COI which could delay or otherwise jeopardize NRC licensing activities. Individual and organizational conflicts of interest are also possible with other contracts, such as those with domestic and foreign private industries, foreign governments, and other domestic (state and federal) governments. The concepts of COI defined in Section 3, Definitions, will be applied to evaluate the potential for and to avoid the occurrence of COI in all CNWRA activities.

2. PURPOSE AND SCOPE

The purpose of this procedure is to provide fundamental criteria and a means for formally documenting CNWRA management evaluations of potential COI among current and prospective employees, other SwRI personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA. This will ensure that no real or perceived COI arises, or that the occurrence of such is effectively mitigated, so that it is demonstrably clear that the CNWRA, its staff, and all personnel and organizations used to support the NRC in fulfillment of its regulatory mission provide research results, technical assistance, and advice that are technically sound, objective, and impartial. This procedure is developed in the context of and meets the intent of the provisions of the contract.

This procedure applies only to personnel and organizations who are or may become engaged in management, technical assistance, technical review, and research activities of the CNWRA. It is first used before an individual or organization is allowed to engage in CNWRA activities, and prior to employment for the core CNWRA staff. Subsequently, it is applied whenever an individual or organization is considered for a significantly different assignment that may introduce a potential COI not previously considered.

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### 3. DEFINITIONS

Individual COI—A relationship exists whereby an individual has past, present, or future planned interests related to the work to be performed for the CNWRA, including work for others, which (i) may diminish his or her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) may result in him or her being given an unfair competitive advantage, or (iii) may otherwise result in the CNWRA not being able to support future NRC or other client activities due to a COI.

NRC Licensee—An individual or organization subject to licensing or certification under NRC regulatory authority. Licensing or certification activities of concern in this procedure include but are not limited to those authorized under the NWPA, Low Level Radioactive Waste Policy Act (LLRWPA), the Uranium Mill Tailings Radiation Control Act (UMTRCA), the West Valley Demonstration Act (WVDA), and the site decommissioning management plan. For purposes of this procedure, the term NRC licensee is extended to include organizations and individuals that have contracted with the party that is actually licensed or certified by the NRC.

Organizational COI—A relationship exists whereby an organization has current or future planned interests related to the work to be performed for the CNWRA, including work for others, which (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) may result in its being given an unfair competitive advantage, or (iii) may otherwise result in the CNWRA not being able to support future NRC or other client activities under the NWPA due to a COI.

Party to the NWPA—The DOE, NRC, affected states and tribes, and other agencies and organizations that the NWPA acknowledges to have a direct role in licensing of a HLW repository and/or an interim storage facility authorized under the NWPA.

Potential COI—A factual situation exists that suggests (indicates) that an actual COI may arise. The term "potential conflict of interest" is used to signify those situations that merit investigation prior to employment or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work—Any technical assistance, technical review, or research activity or management of such activity related to licensing a HLW repository or interim storage facility at any DOE-proposed site, or other NRC-regulated or certified facility. Both past and current work are subject to COI evaluation.

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### 4. RESPONSIBILITY

- 4.1 The President of the CNWRA is responsible for promulgating, revising, and evaluating compliance with this procedure. The President presides at meetings of the COI committee to evaluate potential COI.
- 4.2 The Technical Director of the CNWRA, in fulfilling responsibilities for identifying and allocating resources, is responsible for implementing this procedure.
- 4.3 The President, Technical Director, Assistant Director for Systems Engineering and Integration (ADSE&I), the cognizant Element Manager, and as appropriate, the Director of the Washington Technical Support Office comprise the management committee for evaluating potential COI. The Director of Quality Assurance serves as Secretary to this Committee.
- 4.4 The cognizant Element Manager is responsible for helping identify potential COI and preparing materials for use by the Committee in evaluating COI concerns. The Element Manager is responsible for posing the appropriate questions to a potential staff member, consultant, or subcontractor to determine if a COI is present, regardless of the source of funding. For NRC funded programs, relevant questions are posed on the AP-001-01 form. For other programs and projects the Element Manager is responsible for formulating appropriate questions.

### 5. CRITERIA

The following fundamental criteria form the basis for evaluating potential COI among prospective CNWRA employees, other SwRI personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA to assure that CNWRA remains COI-free in its support to the NRC and other clients. Note that although these criteria are worded in the past tense, they apply to both past and current work activities. If in the future individuals or organizations engage in activity that introduces a COI with assignments within the CNWRA, they will be immediately excluded from further CNWRA work in that area of COI.

- 5.1 Organizations shall not provide technical or policy reviews or advice on work they directly performed, for which they had management responsibility, or which would result in their being given an unfair competitive advantage.
- 5.2 Personnel shall not provide technical or policy reviews or advice on work they directly performed or for which they had management responsibility.

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- 5.3 Personnel and organizations shall not develop or directly support development of NRC technical or policy positions that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party under the NWPA other than the NRC or by any other NRC licensee.
- 5.4 Personnel and organizations shall not participate in any CNWRA activity that is directly related to issues, positions, or decisions for which they have taken a position of advocacy for any party under the NWPA other than the NRC or for any other NRC licensee.
- 5.5 Personnel and organizations may be utilized by the CNWRA to conduct original research. Such research may be in technical areas where, in the past, they directly performed work or for which they had management responsibility while employed by a party under the NWPA other than the NRC or by another NRC licensee. Since research of this nature constitutes original work, it would not give rise to a COI and, consequently, is excluded from consideration under this procedure. Concurrent work for a party under the NWPA other than the NRC or for an NRC licensee is not permitted.
- 5.6 Personnel and organizations may be utilized to perform analyses and interpretations of data, including data which they may have directly acquired or had management responsibility for acquiring while employed by a party to the NWPA other than the NRC or by another NRC licensee, provided that the supporting work has been independently reviewed and approved by the NRC or has been incorporated in a consensus standard.
- 5.7 Personnel and organizations may be utilized to develop or support development of technical criteria that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party under the NWPA other than the NRC or by another NRC licensee, provided that the supporting work has been independently reviewed and approved by the NRC or has been incorporated in a consensus standard.
- 5.8 Personnel may be utilized to perform work, provide aid, counsel, or assist in representing the CNWRA in any proceeding (with regard to work they supervised or directly performed as an employee of the NRC), only after their participation has been reviewed and approved by the Office of General Counsel, NRC, under 10 CFR § 0.73526 and 18 U.S.C. 207. All former senior NRC employees (10 CFR § 0.73526[d]) shall be constrained by the specific prohibitions in place at the time.
- 5.9 Personnel and organizations may be utilized in other activities of the CNWRA that the CNWRA management deems appropriate, with concurrence by the NRC CNWRA Program Manager.

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6. PROCEDURE

The following procedure shall be used by CNWRA management in evaluating potential COI, for considering mitigation of the effects of such potential COI, and for seeking waivers from the requirements of this procedure. This procedure will be applied both before an individual or organization first engages in CNWRA activities and before any significantly different assignment that may introduce potential COI not previously considered.

A. EVALUATION

A management committee comprising the President, Technical Director, ADSE&I, the cognizant Element Manager, and, as required, the Director of the Washington Technical Support Office, shall perform the evaluations. The following steps shall be followed.

- 6.1 An Element Manager will identify a required area of expertise and a prospective individual or organization to provide the expertise. This will typically occur when developing or modifying the staffing section of the CNWRA Management Plan, Operations Plan, proposal, or other planning document. It may also occur as a result of a special request from NRC, response to a reallocation meeting, or a client request.
- 6.2 The Element Manager shall prepare and submit to the COI committee an evaluation portfolio containing:
  - a. Resumes and reasonably detailed work history of the prospective individual or organization, as appropriate.
  - b. A signed letter from the individual or organization attesting to the belief that he/she (it) is currently free from COI, intends to remain free from COI, and will notify the CNWRA if he/she (it) undertakes other work which may give rise to a COI.
  - c. A completed COI Questionnaire for Preliminary Evaluation of Potential Conflict of Interest, Form AP-001-01 (Figure 1) or answers to other COI-related questions appropriate to the proposed scope of work.
  - d. A brief but reasonably complete description of proposed work assignment.
  - e. A brief statement regarding the role of the work in issue resolution, performance assessment, policy evaluation, etc., in the context of the overall program.
  - f. An assessment of programmatic impact of not using the prospect as proposed, including indication of available alternative personnel or organizations.

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### CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL CONFLICT OF INTEREST (Appendix A Attached)

Name: \_\_\_\_\_ Social Security Number \_\_\_\_\_

#### A. GENERAL BACKGROUND RELATED TO DOE ACTIVITIES

1. Have you worked on activities directly or indirectly funded by the U.S. Department of Energy (DOE)? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing of papers which resulted from such activities, as appropriate (attach additional sheets, if necessary).

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2. Have you worked on activities directly or indirectly funded by the DOE that were related to the commercial nuclear fuel cycle? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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#### B. BACKGROUND RELATED TO DOE HIGH-LEVEL WASTE (HLW) ACTIVITIES

3. Have you worked on activities directly or indirectly funded by the DOE that were related to the processing of defense or commercial high-level nuclear wastes into forms for subsequent disposal (such as borosilicate glass)? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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4. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of developing a technical consensus or technical criteria, or of establishing a uniform methodology related to evaluation of HLW disposal? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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5. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of formulating policy? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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6. Have you assumed a position of advocacy regarding issues, positions, or decisions of the DOE in matters related to the commercial nuclear fuel cycle, commercial HLW, or defense HLW? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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7. Provide a complete list of all of your publications which you have reason to believe could be used in supporting DOE application to construct a repository in the tuffaceous rocks at Yucca Mountain in the state of Nevada (attach additional sheets as necessary).

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C. BACKGROUND RELATED TO HLW ACTIVITIES OF OTHER AGENCIES

8. Identify any work of the types listed in items 1 through 7 above which you performed for other parties to the Nuclear Waste Policy Act, including affected states, tribes, and other groups that may have acted as advocates of or interveners to the development of a HLW repository (Attach additional sheets as necessary).

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D. BACKGROUND RELATED TO OTHER NRC LICENSING ACTIVITIES

9. Identify any work which you performed for a licensee for low-level waste disposal or contractor to such organization. Include work on low-level waste disposal facilities licensed directly by NRC or under Agreement State Provisions.

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10. Identify any work which you performed for a NRC licensee or license applicant, or contractor to such organization, including, but not limited to, uranium recovery and site decommissioning management plan projects.

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11. Have you conducted any work directly or indirectly related to the topics listed below (other than work already described under items 1 through 10)?

(i) Nuclear Waste Storage, Transportation, and Disposal? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (ii) Uranium Recovery [Uranium Mining] (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (iii) Three-Mile Island Fuel or Fuel Debris, Naval Fuel, Research Reactor Fuel, Foreign Reactor Fuel (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (iv) Nuclear Site Decommissioning (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (v) DOE Civilian and Defense Programs Related to Reprocessing of Nuclear Materials (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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To assist you in complying with this request, for each set of topics above Appendix A lists associated organizations, locations, and laws, regulations, and rules. Please refer to these lists as necessary to help you identify activities that may be related to the areas of possible COI for CNWRA.

The information provided on this form is to the best of my knowledge true and accurate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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6.3 The committee shall meet to evaluate any potential COI using the information provided in Section 6.2 and the criteria provided in Section 5. The President of the CNWRA may delegate evaluation of potential COI and preparation of a recommendation to a committee member, for final action by the committee as a whole.

6.4 The committee shall prepare a brief report of their finding and transmit it to the Element Manager for action.

### B. MITIGATION AND WAIVER

In unusual cases, it will be desirable to engage the services of an eminently qualified individual or organization with a potential COI. The following steps shall be followed when such situations arise.

6.5 The committee shall make a determination based on the evaluations delineated in Sections 6.1-6.4 of this procedure as to whether the benefit to the CNWRA and the NRC outweighs the negative effect of the COI. If so, the Committee shall propose administrative controls to mitigate the effect of such COI and will petition the NRC for a waiver from the requirements of this procedure. The NRC has sole discretion in granting such waivers on a case-by-case basis. The results of such determination shall be documented.

6.6 Proposed means to mitigate a potential COI may incorporate an appropriate combination of factors that include, but are not limited to (i) independent review and approval of the work that creates the potential COI by the NRC, (ii) incorporation of the work that creates the potential COI in a consensus standard, and (iii) acceptance of the work that creates the potential COI by the technical community, as may be demonstrated by its publication, favorable review, and implementation in scientific or engineering practice. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC decisions. The results of such an NRC determination shall be documented.

6.7 For the special case of candidates for participation in peer reviews, advisory groups, or workshops, proposed means to mitigate a potential COI may incorporate administrative controls that include, but are not limited to (i) requiring full disclosure and documentation describing relationships, if any, with organizations or persons that may give rise to actual or potential COI in the event of a contract/subcontract award, (ii) providing for a balance of differing technical perspectives in selection of peer review or workshop members, (iii) offsetting the potential COI through selection of a preponderance of members who have no COI, (iv) segregating the individual's comments

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to facilitate subsequent identification and evaluation of individual bias, (v) requiring individual expression of dissenting opinions, (vi) proscribing the individual from reviewing and commenting on particular portions of the subject matter, and (vii) controlling the end use of the results of such peer review or workshop so that it has no unacceptable programmatic impact. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC decisions. The results of such an NRC determination shall be documented.

6.8 When submitting a waiver request to the NRC, the CNWRA shall enclose a copy of the proposed statement of work for the candidate individual or organization in question. In addition, the waiver request shall include the resume of the candidate/individual or, in the case of an organization, its current scope of work. Additionally, copies of titles of formal papers by the candidate/individual and the funding organization will be provided to the NRC. In the case of a waiver request for an organization, current and projected future work shall be identified along with the funding organization, and a listing of relevant papers/articles that have been published under the company's name.

6.9 Waiver actions are taken at the sole discretion of the NRC, consistent with the requirements of NRC Acquisition Regulation 2009.570-9. Such actions are strictly limited to those situations in which (i) the work to be performed under the contract is vital to the NRC program, (ii) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest, and (iii) contractual review and surveillance methods can be employed by the NRC to neutralize the conflict.

### 7. RECORDS

All items identified as documentation within this procedure shall be maintained as administrative records in accordance with SwRI procedures and shall be retained for six years, or as long as the individual or organization is in the employment of the CNWRA, whichever is longer.

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### Appendix A

**Topics:**

Nuclear Waste Storage, Transportation, Disposal, Monitored Retrievable Storage, Central Interim Storage, and other related topics

**Organizations and Locations:**

ABB Atom, Babcock and Wilcox, Battelle, Bechtel, Booz Allen, Brunswick, British Nuclear Fuels, Chew and Associates, Chem Nuclear, Dames & Moore, Duke Engineering, Envirocare, Fluor-Daniel, EG&G, Fort St. Vrain, Foster Wheeler Energy Applications, Framatome Cogema Fuels, General Atomics Technologies Corp., General Electric Company, General Nuclear Systems Inc., Golder Associates, H.B. Robinson, Holtech Corp., Kaiser-Hill, Lockheed-Martin Advanced Environmental Systems, Los Alamos Technical Associates, Louisiana Energy Services, Nuclear Assurance Corp., Nuclear Fuel Services Inc., Pacific Nuclear Fuel Services Inc., Pacific Sierra Nuclear Associates, Parsons, Private Fuel Storage Limited Liability Company, Rogers and Associates, Rust Environmental Federal Services, Scientific Applications International Corp., Scientific Ecology Group Inc., Siemens, Transnuclear Inc., TRW, Waste Isolation Pilot Plant, United States Enrichment Corp., Vectra Technologies Inc., Waste Management Inc., Westinghouse Safety Management Solutions, Woodward-Clyde Federal Services, Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Raytheon, Ebasco

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, 10 CFR Part 72, 10 CFR Part 76, 40 CFR Part 191, and 40 CFR Part 194; Nuclear Waste Policy Act of 1982, as amended

**Topics:**

Uranium Recovery [Uranium Mining], and other related topics

**Organizations and Locations:**

Kennecott Uranium Company; Quivira Mining Company; Atlantic Richfield Company; UNC Mining and Milling; Hydro Resources, Inc.; Sohio Western Mining Company; Homestake Mining Company; Crow Butte Resources, Inc.; Rio Algom Mining Corporation; Atlas Corporation; Plateau Resources Limited; Bear Creek Uranium; UMETCO Minerals Corporation; American Nuclear Corporation; U.S. Energy Corporation; Energy Fuels Nuclear, Inc.; Power Resources, Inc.; Exxon Corporation; Cogema Mining, Inc.; Pathfinder Mines Corporation; Petrotomics Company; Western Nuclear, Inc.

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 40, 10 CFR Part 41, 10 CFR Part 20, and 40 CFR Part 192; Uranium Mill Tailings Radiation and Control Act (UMTRCA)

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### Topics:

Three-Mile Island Fuel or Fuel Debris; Naval Fuel, Research Reactor Fuel; Foreign Reactor Fuel, and other related topics

### Organizations and Locations:

Babcock and Wilcox; EG&G, General Electric Company; Holtech Corp.; Idaho National Engineering and Environmental Laboratory; Lawrence Livermore National Laboratory; Lockheed-Martin Advanced Environmental Systems; Los Alamos National Laboratory; Woodward-Clyde Consultants; Woodward-Clyde Federal Services; Agbabian Associates; Allied Chemical Corporation; Scientific Applications International Corp.; Sandia National Laboratories; Vectra Technologies, Inc.; Nuclear Packaging, Inc., WINCO, Rogers and Associates

### Associated Laws, Regulations, or Rules:

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 72, and 10 CFR Part 100; National Environmental Policy Act of 1969 (NEPA)

### Topics:

Nuclear Site Decommissioning, and other related topics

### Organizations and Locations:

AAR Manufacturing; Advanced Medical Systems; American Ecology, Inc.; Babcock and Wilcox; B.R. Chemicals of America, Inc.; Cabot Corporation; Chemetron Corporation; Clevite Corporation; Dow Chemical Company; Earth Sciences Consultants, Inc.; Elkem Metals Company; Envirocare of Utah; Fansteel, Inc.; Fort St. Vrain; General Atomics Technologies Corporation; Heritage Minerals, ICF Kaiser Engineers, Inc.; Kaiser-Hill, Jefferson Proving Ground; Kaiser Aluminum Specialty Products; Kerr-McGee; Lake City Army Ammunition Plant; Minnesota Mining and Manufacturing Company; Molycorp, Inc.; Pacific Northwest National Laboratory; Permagrain Products, Inc.; Pesse Company; METCOA; RMI Titanium Company; Sandia National Laboratories; SCA Services, Inc.; Schott Glass Tech., Inc.; Science Applications International Corporation; Scientific Ecology Group, Inc.; Sequoyah Fuels Corporation; Shieldalloy Metallurgical Corporation; Tenera, Texas Instruments, Incorporated; TRW; U.S. Ecology; West Valley Demonstration Project; Westinghouse Electric Corporation; Whittaker Corporation, Westinghouse Safety Management Solutions

### Associated Laws, Regulations, or Rules:

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 70, and 10 CFR Part 72, 40 CFR Part 141; National Environmental Policy Act of 1969 (NEPA); Radiological Criteria for License Termination (final rule); Interim National Drinking Water Regulations; West Valley Demonstration Act

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**Topics:**

DOE Civilian and Defense Programs Related to Reprocessing of Nuclear Materials, and other related topics

**Organizations and Locations:**

Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Dames & Moore, Westinghouse Savannah River Company, Science Applications International Corporation, Flour-Daniel, British Nuclear Fuels

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, and 10 CFR Part 61

## Appendix A

### **Topics:**

Nuclear Waste Storage, Transportation, Disposal, Monitored Retrievable Storage, Central I and other related topics

### **Organizations and Locations:**

ABB Atom, Babcock and Wilcox, Battelle, Bechtel, Booz Allen, Brunswick, British Nuclear and Associates, Chem Nuclear, Dames & Moore, Duke Engineering, Envirocare, Fluor-Dani St. Vrain, Foster Wheeler Energy Applications, Framatome Cogema Fuels, General Atomic Technologies Corp., General Electric Company, General Nuclear Systems Inc., Golder Associates, H.B. Robinson, Holtech Corp., Kaiser-Hill, Lockheed-Martin Advanced Environmental Systems, Los Alamos Technical Associates, Louisiana Energy Services, Nuclear Assurance Corp., Nuclear Fuel Services Inc., Pacific Nuclear Fuel Services Inc., Pacific Sierra Nuclear Associates, Parsons, Private Fuel Storage Limited Liability Company, Rogers and Associates, Rust Environmental Federal Services, Scientific Applications International Corp., Scientific Ecology Group Inc., Siemens, Transnuclear Inc., TRW, Waste Isolation Pilot Plant, United States Enrichment Corp., Vectra Technologies Inc., Waste Management Inc., Westinghouse Safety Management Solutions, Woodward-Clyde Federal Services, Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Raytheon, Ebasco

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, 10 CFR Part 72, 10 CFR Part 76, 40 CFR Part 191, and 40 CFR Part 194; Nuclear Waste Policy Act of 1982, as amended

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### **Topics:**

Uranium Recovery [Uranium Mining], and other related topics

### **Organizations and Locations:**

Kennecott Uranium Company; Quivira Mining Company; Atlantic Richfield Company; UNC Mining and Milling; Hydro Resources, Inc.; Sohio Western Mining Company; Homestake Mining Company; Crow Butte Resources, Inc.; Rio Algom Mining Corporation; Atlas Corporation; Plateau Resources Limited; Bear Creek Uranium; UMETCO Minerals Corporation; American Nuclear Corporation; U.S. Energy Corporation; Energy Fuels Nuclear, Inc.; Power Resources, Inc.; Exxon Corporation; Cogema Mining, Inc.; Pathfinder Mines Corporation; Petrotomics Company; Western Nuclear, Inc.

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 40, 10 CFR Part 41, 10 CFR Part 20, and 40 CFR Part 192; Uranium Mill Tailings Radiation and Control Act (UMTRCA)

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### **Topics:**

Three-Mile Island Fuel or Fuel Debris; Naval Fuel, Research Reactor Fuel; Foreign Reactor Fuel, and other related topics

**Organizations and Locations:**

Babcock and Wilcox; EG&G, General Electric Company; Holtech Corp.; Idaho National Engineering and Environmental Laboratory; Lawrence Livermore National Laboratory; Lockheed-Martin Advanced Environmental Systems; Los Alamos National Laboratory; Woodward-Clyde Consultants; Woodward-Clyde Federal Services; Agbabian Associates; Allied Chemical Corporation; Scientific Applications International Corp.; Sandia National Laboratories; Vectra Technologies, Inc.; Nuclear Packaging, Inc., WINCO, Rogers and Associates

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 72, and 10 CFR Part 100; National Environmental Policy Act of 1969 (NEPA)

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**Topics:**

Nuclear Site Decommissioning, and other related topics

**Organizations and Locations:**

AAR Manufacturing; Advanced Medical Systems; American Ecology, Inc.; Babcock and Wilcox; B.R. Chemicals of America, Inc.; Cabot Corporation; Chemetron Corporation; Clevite Corporation; Dow Chemical Company; Earth Sciences Consultants, Inc.; Elkem Metals Company; Enviocare of Utah; Fansteel, Inc.; Fort St. Vrain; General Atomics Technologies Corporation; Heritage Minerals, ICF Kaiser Engineers, Inc.; Kaiser-Hill, Jefferson Proving Ground; Kaiser Aluminum Specialty Products; Kerr-McGee; Lake City Army Ammunition Plant; Minnesota Mining and Manufacturing Company; Molycorp, Inc.; Pacific Northwest National Laboratory; Permagrain Products, Inc.; Pesse Company; METCOA; RMI Titanium Company; Sandia National Laboratories; SCA Services, Inc.; Schott Glass Tech., Inc.; Science Applications International Corporation; Scientific Ecology Group, Inc.; Sequoyah Fuels Corporation; Shieldalloy Metallurgical Corporation; Tenera, Texas Instruments, Incorporated; TRW; U.S. Ecology; West Valley Demonstration Project; Westinghouse Electric Corporation; Whittaker Corporation, Westinghouse Safety Management Solutions

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 70, and 10 CFR Part 72, 40 CFR Part 141; National Environmental Policy Act of 1969 (NEPA); Radiological Criteria for License Termination (final rule); Interim National Drinking Water Regulations; West Valley Demonstration Act

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**Topics:**

DOE Civilian and Defense Programs Related to Reprocessing of Nuclear Materials, and other related topics

**Organizations and Locations:**

Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Dames & Moore, Westinghouse Savannah River Company, Science Applications International Corporation, Flour-Daniel, British Nuclear Fuels

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, and 10 CFR Part 61

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Title Evaluation of Potential Conflict of Interest

**EFFECTIVITY AND APPROVAL**

Revision 4 of this procedure became effective on March 27, 1998. This procedure consists of the pages and changes listed below.

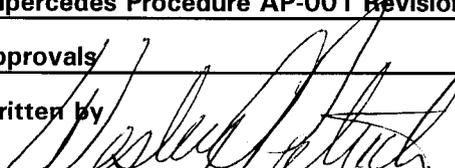
<u>Page No.</u>	<u>Change</u>	<u>Date Effective</u>
1	1	10/19/98
2-4	0	03/27/98
5	1	10/19/98
6-9	0	03/27/98
10	1	10/19/98
11-14	0	03/27/98

**SUPERSEDED**

Supercedes Procedure AP-001 Revision 4, Change 0.

Approvals

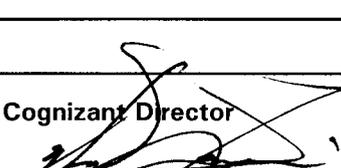
Written by



Date

10/15/98

Cognizant Director



Date

10/14/98

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**EVALUATION OF POTENTIAL CONFLICT OF INTEREST**

1. INTRODUCTION

The need to avoid conflict of interest (COI) in technical assistance and research programs was a principal reason for establishing the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Contract No. NRC-02-97-009, Section C.1.1.2 and other contracts). Although initial concerns regarding COI were restricted to CNWRA work under the Nuclear Waste Policy Act (NWPA), similar concerns relate to CNWRA support to NRC in non high-level waste (HLW) programs. Many prospective CNWRA employees, other Southwest Research Institute (SwRI) personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA now or in the past may have worked for the Department of Energy (DOE), its contractors, other affected parties under the NWPA, or other Nuclear Regulatory Commission (NRC) licensees and their contractors. Prior and/or ongoing work of this type introduces the potential for real or perceived COI which could delay or otherwise jeopardize NRC licensing activities. Individual and organizational conflicts of interest are also possible with other contracts, such as those with domestic and foreign private industries, foreign governments, and other domestic (state and federal) governments. The concepts of COI defined in Section 3, Definitions, will be applied to evaluate the potential for and to avoid the occurrence of COI in all CNWRA activities.

2. PURPOSE AND SCOPE

The purpose of this procedure is to provide fundamental criteria and a means for formally documenting CNWRA management evaluations of potential COI among current and prospective employees, other SwRI personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA. This will ensure that no real or perceived COI arises, or that the occurrence of such is effectively mitigated, so that it is demonstrably clear that the CNWRA, its staff, and all personnel and organizations used to support the NRC in fulfillment of its regulatory mission provide research results, technical assistance, and advice that are technically sound, objective, and impartial. This procedure is developed in the context of and meets the intent of the provisions of the contract.

This procedure applies only to personnel and organizations who are or may become engaged in management, technical assistance, technical review, and research activities of the CNWRA. It is first used before an individual or organization is allowed to engage in CNWRA activities, and prior to employment for the core CNWRA staff. Subsequently, it is applied whenever an individual or organization is considered for a significantly different assignment that may introduce a potential COI not previously considered.

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### 3. DEFINITIONS

Individual COI—A relationship exists whereby an individual has past, present, or future planned interests related to the work to be performed for the CNWRA, including work for others, which (i) may diminish his or her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) may result in him or her being given an unfair competitive advantage, or (iii) may otherwise result in the CNWRA not being able to support future NRC or other client activities due to a COI.

NRC Licensee—An individual or organization subject to licensing or certification under NRC regulatory authority. Licensing or certification activities of concern in this procedure include but are not limited to those authorized under the NWPA, Low Level Radioactive Waste Policy Act (LLRWPA), the Uranium Mill Tailings Radiation Control Act (UMTRCA), the West Valley Demonstration Act (WVDA), and the site decommissioning management plan. For purposes of this procedure, the term NRC licensee is extended to include organizations and individuals that have contracted with the party that is actually licensed or certified by the NRC.

Organizational COI—A relationship exists whereby an organization has current or future planned interests related to the work to be performed for the CNWRA, including work for others, which (i) may diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) may result in its being given an unfair competitive advantage, or (iii) may otherwise result in the CNWRA not being able to support future NRC or other client activities under the NWPA due to a COI.

Party to the NWPA—The DOE, NRC, affected states and tribes, and other agencies and organizations that the NWPA acknowledges to have a direct role in licensing of a HLW repository and/or an interim storage facility authorized under the NWPA.

Potential COI—A factual situation exists that suggests (indicates) that an actual COI may arise. The term "potential conflict of interest" is used to signify those situations that merit investigation prior to employment or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work—Any technical assistance, technical review, or research activity or management of such activity related to licensing a HLW repository or interim storage facility at any DOE-proposed site, or other NRC-regulated or certified facility. Both past and current work are subject to COI evaluation.

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### 4. RESPONSIBILITY

- 4.1 The President of the CNWRA is responsible for promulgating, revising, and evaluating compliance with this procedure. The President presides at meetings of the COI committee to evaluate potential COI.
- 4.2 The Technical Director of the CNWRA, in fulfilling responsibilities for identifying and allocating resources, is responsible for implementing this procedure.
- 4.3 The President, Technical Director, Assistant Director for Systems Engineering and Integration (ADSE&I), the cognizant Element Manager, and as appropriate, the Director of the Washington Technical Support Office comprise the management committee for evaluating potential COI. The Director of Quality Assurance serves as Secretary to this Committee.
- 4.4 The cognizant Element Manager is responsible for helping identify potential COI and preparing materials for use by the Committee in evaluating COI concerns. The Element Manager is responsible for posing the appropriate questions to a potential staff member, consultant, or subcontractor to determine if a COI is present, regardless of the source of funding. For NRC funded programs, relevant questions are posed on the AP-001-01 form. For other programs and projects the Element Manager is responsible for formulating appropriate questions.

### 5. CRITERIA

The following fundamental criteria form the basis for evaluating potential COI among prospective CNWRA employees, other SwRI personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA to assure that CNWRA remains COI-free in its support to the NRC and other clients. Note that although these criteria are worded in the past tense, they apply to both past and current work activities. If in the future individuals or organizations engage in activity that introduces a COI with assignments within the CNWRA, they will be immediately excluded from further CNWRA work in that area of COI.

- 5.1 Organizations shall not provide technical or policy reviews or advice on work they directly performed, for which they had management responsibility, or which would result in their being given an unfair competitive advantage.
- 5.2 Personnel shall not provide technical or policy reviews or advice on work they directly performed or for which they had management responsibility.

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- 5.3 Personnel and organizations shall not develop or directly support development of NRC technical or policy positions that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party under the NWPA other than the NRC or by any other NRC licensee.
- 5.4 Personnel and organizations shall not participate in any CNWRA activity that is directly related to issues, positions, or decisions for which they have taken a position of advocacy for any party under the NWPA other than the NRC or for any other NRC licensee.
- 5.5 Personnel and organizations may be utilized by the CNWRA to conduct limited original research in technical areas where, in the past, those personnel and organizations directly performed work or for which they had management responsibility while employed by a party under the NWPA other than the NRC or by another NRC licensee provided such previous research was not specific to the site, design, or facility addressed by NRC contracts with SwRI for work performed by the CNWRA. Concurrent work for a party under the NWPA other than the NRC or for an NRC licensee is not permitted.
- 5.6 Personnel and organizations may be utilized to perform analyses and evaluations using methodologies they directly developed or had management responsibility for developing while employed by a party under the NWPA other than the NRC or by another NRC licensee, provided that the methodology has been independently reviewed and approved by the NRC or has been incorporated in a consensus standard.
- 5.7 Personnel and organizations may be utilized to develop or support development of technical criteria that are based principally or substantially on work they directly performed or for which they had management responsibility while employed by any party under the NWPA other than the NRC or by another NRC licensee, provided that the supporting work has been independently reviewed and approved by the NRC.
- 5.8 Personnel may be utilized to perform work, provide aid, counsel, or assist in representing the CNWRA in any proceeding (with regard to work they supervised or directly performed as an employee of the NRC), only after their participation has been reviewed and approved by the Office of General Counsel, NRC, under 18 U.S.C. 207. All former senior NRC employees shall be constrained by the specific prohibitions in place at the time they are considered for employment or a consultancy.
- 5.9 Personnel and organizations may be utilized in other activities of the CNWRA that the CNWRA management deems appropriate, with concurrence by the NRC CNWRA Program Manager.

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6. PROCEDURE

The following procedure shall be used by CNWRA management in evaluating potential COI, for considering mitigation of the effects of such potential COI, and for seeking waivers from the requirements of this procedure. This procedure will be applied both before an individual or organization first engages in CNWRA activities and before any significantly different assignment that may introduce potential COI not previously considered.

A. EVALUATION

A management committee comprising the President, Technical Director, ADSE&I, the cognizant Element Manager, and, as required, the Director of the Washington Technical Support Office, shall perform the evaluations. The following steps shall be followed.

- 6.1 An Element Manager will identify a required area of expertise and a prospective individual or organization to provide the expertise. This will typically occur when developing or modifying the staffing section of the CNWRA Management Plan, Operations Plan, proposal, or other planning document. It may also occur as a result of a special request from NRC, response to a reallocation meeting, or a client request.
- 6.2 The Element Manager shall prepare and submit to the COI committee an evaluation portfolio containing:
  - a. Resumes and reasonably detailed work history of the prospective individual or organization, as appropriate.
  - b. A signed letter from the individual or organization attesting to the belief that he/she (it) is currently free from COI, intends to remain free from COI, and will notify the CNWRA if he/she (it) undertakes other work which may give rise to a COI.
  - c. A completed COI Questionnaire for Preliminary Evaluation of Potential Conflict of Interest, Form AP-001-01 (Figure 1) or answers to other COI-related questions appropriate to the proposed scope of work.
  - d. A brief but reasonably complete description of proposed work assignment.
  - e. A brief statement regarding the role of the work in issue resolution, performance assessment, policy evaluation, etc., in the context of the overall program.
  - f. An assessment of programmatic impact of not using the prospect as proposed, including indication of available alternative personnel or organizations.

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### CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL CONFLICT OF INTEREST (Appendix A Attached)

Name: \_\_\_\_\_ Social Security Number \_\_\_\_\_

#### A. GENERAL BACKGROUND RELATED TO DOE ACTIVITIES

1. Have you worked on activities directly or indirectly funded by the U.S. Department of Energy (DOE)? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing of papers which resulted from such activities, as appropriate (attach additional sheets, if necessary).

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2. Have you worked on activities directly or indirectly funded by the DOE that were related to the commercial nuclear fuel cycle? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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#### B. BACKGROUND RELATED TO DOE HIGH-LEVEL WASTE (HLW) ACTIVITIES

3. Have you worked on activities directly or indirectly funded by the DOE that were related to the processing of defense or commercial high-level nuclear wastes into forms for subsequent disposal (such as borosilicate glass)? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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4. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of developing a technical consensus or technical criteria, or of establishing a uniform methodology related to evaluation of HLW disposal? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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5. Have you participated in or managed activities directly or indirectly funded by the DOE that had the purpose of formulating policy? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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6. Have you assumed a position of advocacy regarding issues, positions, or decisions of the DOE in matters related to the commercial nuclear fuel cycle, commercial HLW, or defense HLW? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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7. Provide a complete list of all of your publications which you have reason to believe could be used in supporting DOE application to construct a repository in the tuffaceous rocks at Yucca Mountain in the state of Nevada (attach additional sheets as necessary).

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C. BACKGROUND RELATED TO HLW ACTIVITIES OF OTHER AGENCIES

8. Identify any work of the types listed in items 1 through 7 above which you performed for other parties to the Nuclear Waste Policy Act, including affected states, tribes, and other groups that may have acted as advocates of or interveners to the development of a HLW repository (Attach additional sheets as necessary).

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D. BACKGROUND RELATED TO OTHER NRC LICENSING ACTIVITIES

9. Identify any work which you performed for a licensee for low-level waste disposal or contractor to such organization. Include work on low-level waste disposal facilities licensed directly by NRC or under Agreement State Provisions.

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10. Identify any work which you performed for a NRC licensee or license applicant, or contractor to such organization, including, but not limited to, uranium recovery and site decommissioning management plan projects.

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11. Have you conducted any work directly or indirectly related to the topics listed below (other than work already described under items 1 through 10)?

- (i) Nuclear Waste Storage, Transportation, and Disposal? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (ii) Uranium Recovery [Uranium Mining] (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (iii) Three-Mile Island Fuel or Fuel Debris, Naval Fuel, Research Reactor Fuel, Foreign Reactor Fuel (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (iv) Nuclear Site Decommissioning (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (v) DOE Civilian and Defense Programs Related to Reprocessing of Nuclear Materials (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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To assist you in complying with this request, for each set of topics above Appendix A lists associated organizations, locations, and laws, regulations, and rules. Please refer to these lists as necessary to help you identify activities that may be related to the areas of possible COI for CNWRA.

The information provided on this form is to the best of my knowledge true and accurate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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6.3 The committee shall meet to evaluate any potential COI using the information provided in Section 6.2 and the criteria provided in Section 5. The President of the CNWRA may delegate evaluation of potential COI and preparation of a recommendation to a committee member, for final action by the committee as a whole.

6.4 The committee shall prepare a brief report of their finding and transmit it to the Element Manager for action.

### B. MITIGATION AND WAIVER

In unusual cases, it will be desirable to engage the services of an eminently qualified individual or organization with a potential COI. The following steps shall be followed when such situations arise.

6.5 The committee shall make a determination based on the evaluations delineated in Sections 6.1-6.4 of this procedure as to whether the benefit to the CNWRA and the NRC outweighs the negative effect of the COI. If so, the Committee shall propose administrative controls to mitigate the effect of such COI and will petition the NRC for a waiver from the requirements of this procedure. The NRC has sole discretion in granting such waivers on a case-by-case basis. The results of such determination shall be documented.

6.6 Proposed means to mitigate a potential COI may incorporate an appropriate combination of factors that include, but are not limited to (i) independent review and approval by NRC of the work that creates the potential COI, (ii) incorporation of the work that creates the potential COI in a consensus standard, and (iii) acceptance of the work that creates the potential COI by the technical community, as may be demonstrated by its publication, favorable review, and implementation in scientific or engineering practice. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC decisions. The results of such an NRC determination shall be documented.

6.7 For the special case of candidates for participation in peer reviews, advisory groups, or workshops, proposed means to mitigate a potential COI may incorporate administrative controls that include, but are not limited to (i) requiring full disclosure and documentation describing relationships, if any, with organizations or persons that may give rise to actual or potential COI in the event of a contract/subcontract award, (ii) providing for a balance of differing technical perspectives in selection of peer review or workshop members, (iii) offsetting the potential COI through selection of a preponderance of members who have no COI, (iv) segregating the individual's

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comments to facilitate subsequent identification and evaluation of individual bias, (v) requiring individual expression of dissenting opinions, (vi) proscribing the individual from reviewing and commenting on particular portions of the subject matter, and (vii) controlling the end use of the results of such peer review or workshop so that it has no unacceptable programmatic impact. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC decisions. The results of such an NRC determination shall be documented.

6.8 When submitting a waiver request to the NRC, the CNWRA shall enclose a copy of the proposed statement of work for the candidate individual or organization in question. In addition, the waiver request shall include the resume of the candidate/individual or, in the case of an organization, its current scope of work. Additionally, copies of titles of formal papers by the candidate/individual and the funding organization will be provided to the NRC. In the case of a waiver request for an organization, current and projected future work shall be identified along with the funding organization, and a listing of relevant papers/articles that have been published under the company's name.

6.9 Waiver actions are taken at the sole discretion of the NRC, consistent with the requirements of NRC Acquisition Regulation 2009.570-9. Such actions are strictly limited to those situations in which (i) the work to be performed under the contract is vital to the NRC program, (ii) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest, and (iii) contractual review and surveillance methods can be employed by the NRC to neutralize the conflict.

7. RECORDS

All items identified as documentation within this procedure shall be maintained as administrative records in accordance with SwRI procedures and shall be retained for six years, or as long as the individual or organization is in the employment of the CNWRA, whichever is longer.

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**Appendix A**

**Topics:**

Nuclear Waste Storage, Transportation, Disposal, Monitored Retrievable Storage, Central Interim Storage, and other related topics

**Organizations and Locations:**

ABB Atom, Babcock and Wilcox, Battelle, Bechtel, Booz Allen, Brunswick, British Nuclear Fuels, Chew and Associates, Chem Nuclear, Dames & Moore, Duke Engineering, Envirocare, Fluor-Daniel, EG&G, Fort St. Vrain, Foster Wheeler Energy Applications, Framatome Cogema Fuels, General Atomics Technologies Corp., General Electric Company, General Nuclear Systems Inc., Golder Associates, H.B. Robinson, Holtech Corp., Kaiser-Hill, Lockheed-Martin Advanced Environmental Systems, Los Alamos Technical Associates, Louisiana Energy Services, Nuclear Assurance Corp., Nuclear Fuel Services Inc., Pacific Nuclear Fuel Services Inc., Pacific Sierra Nuclear Associates, Parsons, Private Fuel Storage Limited Liability Company, Rogers and Associates, Rust Environmental Federal Services, Scientific Applications International Corp., Scientific Ecology Group Inc., Siemens, Transnuclear Inc., TRW, Waste Isolation Pilot Plant, United States Enrichment Corp., Vectra Technologies Inc., Waste Management Inc., Westinghouse Safety Management Solutions, Woodward-Clyde Federal Services, Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Raytheon, Ebasco

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, 10 CFR Part 72, 10 CFR Part 76, 40 CFR Part 191, and 40 CFR Part 194; Nuclear Waste Policy Act of 1982, as amended

**Topics:**

Uranium Recovery [Uranium Mining], and other related topics

**Organizations and Locations:**

Kennecott Uranium Company; Quivira Mining Company; Atlantic Richfield Company; UNC Mining and Milling; Hydro Resources, Inc.; Sohio Western Mining Company; Homestake Mining Company; Crow Butte Resources, Inc.; Rio Algom Mining Corporation; Atlas Corporation; Plateau Resources Limited; Bear Creek Uranium; UMETCO Minerals Corporation; American Nuclear Corporation; U.S. Energy Corporation; Energy Fuels Nuclear, Inc.; Power Resources, Inc.; Exxon Corporation; Cogema Mining, Inc.; Pathfinder Mines Corporation; Petrotomics Company; Western Nuclear, Inc.

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 40, 10 CFR Part 41, 10 CFR Part 20, and 40 CFR Part 192; Uranium Mill Tailings Radiation and Control Act (UMTRCA)

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**Topics:**

Three-Mile Island Fuel or Fuel Debris; Naval Fuel, Research Reactor Fuel; Foreign Reactor Fuel, and other related topics

**Organizations and Locations:**

Babcock and Wilcox; EG&G, General Electric Company; Holtech Corp.; Idaho National Engineering and Environmental Laboratory; Lawrence Livermore National Laboratory; Lockheed-Martin Advanced Environmental Systems; Los Alamos National Laboratory; Woodward-Clyde Consultants; Woodward-Clyde Federal Services; Agabian Associates; Allied Chemical Corporation; Scientific Applications International Corp.; Sandia National Laboratories; Vectra Technologies, Inc.; Nuclear Packaging, Inc., WINCO, Rogers and Associates

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 72, and 10 CFR Part 100; National Environmental Policy Act of 1969 (NEPA)

**Topics:**

Nuclear Site Decommissioning, and other related topics

**Organizations and Locations:**

AAR Manufacturing; Advanced Medical Systems; American Ecology, Inc.; Babcock and Wilcox; B.R. Chemicals of America, Inc.; Cabot Corporation; Chemetron Corporation; Clevite Corporation; Dow Chemical Company; Earth Sciences Consultants, Inc.; Elkem Metals Company; Envirocare of Utah; Fansteel, Inc.; Fort St. Vrain; General Atomics Technologies Corporation; Heritage Minerals, ICF Kaiser Engineers, Inc.; Kaiser-Hill, Jefferson Proving Ground; Kaiser Aluminum Specialty Products; Kerr-McGee; Lake City Army Ammunition Plant; Minnesota Mining and Manufacturing Company; Molycorp, Inc.; Pacific Northwest National Laboratory; Permagrain Products, Inc.; Pesse Company; METCOA; RMI Titanium Company; Sandia National Laboratories; SCA Services, Inc.; Schott Glass Tech., Inc.; Science Applications International Corporation; Scientific Ecology Group, Inc.; Sequoyah Fuels Corporation; Shieldalloy Metallurgical Corporation; Tenera, Texas Instruments, Incorporated; TRW; U.S. Ecology; West Valley Demonstration Project; Westinghouse Electric Corporation; Whittaker Corporation, Westinghouse Safety Management Solutions

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 70, and 10 CFR Part 72, 40 CFR Part 141; National Environmental Policy Act of 1969 (NEPA); Radiological Criteria for License Termination (final rule); Interim National Drinking Water Regulations; West Valley Demonstration Act

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**Topics:**

DOE Civilian and Defense Programs Related to Reprocessing of Nuclear Materials, and other related topics

**Organizations and Locations:**

Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Dames & Moore, Westinghouse Savannah River Company, Science Applications International Corporation, Fluor-Daniel, British Nuclear Fuels

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, and 10 CFR Part 61

## Appendix A

### **Topics:**

Nuclear Waste Storage, Transportation, Disposal, Monitored Retrievable Storage, Central Interim Storage, and other related topics

### **Organizations and Locations:**

ABB Atom, Babcock and Wilcox, Battelle, Bechtel, Booz Allen, Brunswick, British Nuclear Fuels, Chew and Associates, Chem Nuclear, Dames & Moore, Duke Engineering, Envirocare, Fluor-Daniel, EG&G, Fort St. Vrain, Foster Wheeler Energy Applications, Framatome Cogema Fuels, General Atomic Technologies Corp., General Electric Company, General Nuclear Systems Inc., Golder Associates, H.B. Robinson, Holtech Corp., Kaiser-Hill, Lockheed-Martin Advanced Environmental Systems, Los Alamos Technical Associates, Louisiana Energy Services, Nuclear Assurance Corp., Nuclear Fuel Services Inc., Pacific Nuclear Fuel Services Inc., Pacific Sierra Nuclear Associates, Parsons, Private Fuel Storage Limited Liability Company, Rogers and Associates, Rust Environmental Federal Services, Scientific Applications International Corp., Scientific Ecology Group Inc., Siemens, Transnuclear Inc., TRW, Waste Isolation Pilot Plant, United States Enrichment Corp., Vectra Technologies Inc., Waste Management Inc., Westinghouse Safety Management Solutions, Woodward-Clyde Federal Services, Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Raytheon, Ebasco

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, 10 CFR Part 72, 10 CFR Part 76, 40 CFR Part 191, and 40 CFR Part 194; Nuclear Waste Policy Act of 1982, as amended

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### **Topics:**

Uranium Recovery [Uranium Mining], and other related topics

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### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 40, 10 CFR Part 41, 10 CFR Part 20, and 40 CFR Part 192; Uranium Mill Tailings Radiation and Control Act (UMTRCA)

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### **Topics:**

Three-Mile Island Fuel or Fuel Debris; Naval Fuel, Research Reactor Fuel; Foreign Reactor Fuel, and other related topics

**Organizations and Locations:**

Babcock and Wilcox; EG&G, General Electric Company; Holtech Corp.; Idaho National Engineering and Environmental Laboratory; Lawrence Livermore National Laboratory; Lockheed-Martin Advanced Environmental Systems; Los Alamos National Laboratory; Woodward-Clyde Consultants; Woodward-Clyde Federal Services; Agbabian Associates; Allied Chemical Corporation; Scientific Applications International Corp.; Sandia National Laboratories; Vectra Technologies, Inc.; Nuclear Packaging, Inc., WINCO, Rogers and Associates

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 72, and 10 CFR Part 100; National Environmental Policy Act of 1969 (NEPA)

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**Topics:**

Nuclear Site Decommissioning, and other related topics

**Organizations and Locations:**

AAR Manufacturing; Advanced Medical Systems; American Ecology, Inc.; Babcock and Wilcox; B.R. Chemicals of America, Inc.; Cabot Corporation; Chemetron Corporation; Clevite Corporation; Dow Chemical Company; Earth Sciences Consultants, Inc.; Elkem Metals Company; Envirocare of Utah; Fansteel, Inc.; Fort St. Vrain; General Atomics Technologies Corporation; Heritage Minerals, ICF Kaiser Engineers, Inc.; Kaiser-Hill, Jefferson Proving Ground; Kaiser Aluminum Specialty Products; Kerr-McGee; Lake City Army Ammunition Plant; Minnesota Mining and Manufacturing Company; Molycorp, Inc.; Pacific Northwest National Laboratory; Permagrain Products, Inc.; Pesse Company; METCOA; RMI Titanium Company; Sandia National Laboratories; SCA Services, Inc.; Schott Glass Tech., Inc.; Science Applications International Corporation; Scientific Ecology Group, Inc.; Sequoyah Fuels Corporation; Shieldalloy Metallurgical Corporation; Tenera, Texas Instruments, Incorporated; TRW; U.S. Ecology; West Valley Demonstration Project; Westinghouse Electric Corporation; Whittaker Corporation, Westinghouse Safety Management Solutions

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 70, and 10 CFR Part 72, 40 CFR Part 141; National Environmental Policy Act of 1969 (NEPA); Radiological Criteria for License Termination (final rule); Interim National Drinking Water Regulations; West Valley Demonstration Act

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**Topics:**

DOE Civilian and Defense Programs Related to Reprocessing of Nuclear Materials, and other related topics

**Organizations and Locations:**

Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Dames & Moore, Westinghouse Savannah River Company, Science Applications International Corporation, Flour-Daniel, British Nuclear Fuels

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, and 10 CFR Part 61

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Title: Evaluation of Potential for Conflict of Interest

**EFFECTIVITY AND APPROVAL**

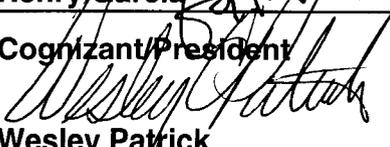
Revision 5 of this procedure became effective on 8/19/2002. This procedure consists of the pages and changes listed below.

<u>Page No.</u>	<u>Change</u>	<u>Date Effective</u>
ALL	0	8/19/2002

**SUPERSEDED**

Supersedes Procedure AP-001 Revision 4, Change 1.

**Approvals**

Written by  Bruce Mabrito	Date 8/14/2002	Concurrence Review  Henry Garcia	Date 8/14/2002
Quality Assurance  Mark Ehstrom	Date 8/14/02	Cognizant/President  Wesley Patrick	Date 8/14/2002

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### EVALUATION OF POTENTIAL CONFLICT OF INTEREST

#### 1. INTRODUCTION

The need to avoid conflict of interest (COI) in conducting technical assistance and research programs was a principal reason for the U.S. Nuclear Regulatory Commission (NRC) establishing the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Contract No. NRC-02-97-009, Section C.1.1.2 and other contracts). Although initial concerns regarding COI were restricted to CNWRA work under the Nuclear Waste Policy Act (NWPA), similar concerns relate to CNWRA support of NRC in non high-level waste (HLW) programs. Many prospective CNWRA employees, other Southwest Research Institute™ (SwRI) personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA may now work or may in the past have worked for the U. S. Department of Energy (DOE), its contractors, other affected parties under the NWPA, or other U. S. Nuclear Regulatory Commission (NRC) licensees and their contractors. Past, present, or planned future work for these parties introduces the potential for COI that could delay or otherwise jeopardize NRC licensing activities.

Individual and organizational conflicts of interest also are possible with other contracts, such as those with domestic and foreign private industries, foreign governments, and other domestic (state and federal) governments. This procedure is used to evaluate the potential for and to avoid the occurrence of COI in all CNWRA activities.

#### 2. PURPOSE AND SCOPE

The purpose of this procedure is to provide fundamental criteria and a means for formally documenting CNWRA management evaluations of potential for COI among current and prospective CNWRA employees, other SwRI personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA (hereinafter referred to as "individuals and organizations"). This will ensure that no COI arises, or that the occurrence of such is effectively mitigated, so that it is demonstrably clear that the CNWRA, its staff, and all personnel and organizations used to support the NRC in fulfillment of its regulatory mission provide research results, technical assistance, and advice that are technically sound, objective, and impartial. This procedure is developed in the context of and meets the intent of the provisions of contracts with all clients of the CNWRA.

This procedure applies only to personnel and organizations who are or may become engaged in management, technical assistance, technical review, and research activities of the CNWRA. It is first used before an individual or organization is allowed to engage in CNWRA activities, and prior to employment as CNWRA staff. Subsequently, it is applied whenever an individual or organization is considered for a significantly different assignment that may introduce a potential for COI not previously considered and at least annually absent such changes in assignments.

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### 3. DEFINITIONS

Employed—A relationship exists whereby payment or similar consideration is received for services rendered. For purposes of this procedure, the term encompasses consultant and subcontractor relationships, as well as traditional employer-employee arrangements. The ultimate or original source of the funding must be known to accurately evaluate the potential for COI.

Individual COI—A relationship exists whereby an individual has past, present, or planned future interests related to the work to be performed for the CNWRA, including work for others, that may (i) diminish his or her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) result in an unfair competitive advantage, or (iii) otherwise result in the CNWRA not being able to support future NRC or other client activities because of a COI. The ultimate or original source of funding must be determined to support an evaluation of the potential for COI. If the original source of funds is a conflicted organization, the potential for COI remains, regardless of how many tiers of subcontracting may separate the individual from that source.

NRC Licensee—An individual or organization subject to licensing or certification under NRC regulatory authority is considered an NRC licensee. Licensing or certification activities of concern in this procedure include but are not limited to those authorized under the NWPA, Low Level Radioactive Waste Policy Act (LLRWPA), the Uranium Mill Tailings Radiation Control Act (UMTRCA), and the West Valley Demonstration Act (WVDA), as well as site decommissioning. For purposes of this procedure, the term NRC licensee is extended to include individuals and organizations that have contracted with the party that is actually licensed or certified by the NRC.

Organizational COI—A relationship exists whereby an organization—whether it is an independent entity or an affiliate unit of another organization—has past, present, or planned future interests related to the work to be performed for the CNWRA, including work for others, that may (i) diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) result in its being given an unfair competitive advantage, or (iii) otherwise result in the CNWRA not being able to support future NRC or other client activities because of a COI. The ultimate or original source of funding must be determined to support an evaluation of the potential for COI. If the original source of funds is a conflicted organization, the potential for COI remains, regardless of how many tiers of subcontracting may separate the organization from that source.

Party to the NWPA—The DOE, NRC, affected states and tribes, and other agencies and organizations that the NWPA acknowledges to have a direct role in the licensing proceeding for a HLW repository and/or an interim storage facility authorized under the NWPA are considered parties to the NWPA. Although party standing is defined in 10 CFR Part 2 with respect to the licensing proceeding, COI restrictions on work for parties apply to all activities funded under the NWPA, not just the licensing proceeding.

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Potential for COI—A factual situation exists that indicates that a COI may arise. The term “potential for conflict of interest” is used to signify those situations that merit investigation prior to employment or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work—Any technical assistance, technical review, or research activity or management of such activity on behalf of the NRC or other client. Internally funded research and development activities are not considered to be “work” for purposes of this procedure. Past, present, and planned future work are subject to COI evaluation.

### 4. RESPONSIBILITY

- 4.1 The President of the CNWRA is responsible for promulgating, revising, and evaluating compliance with this procedure. The President presides at meetings of the Source Evaluation Committee (SEC) to evaluate the potential for COI and other matters (e.g., cost, schedule, and quality) related to employment of individuals and organizations.
- 4.2 The Technical Director of the CNWRA, in fulfilling responsibilities for identifying and allocating resources, is responsible for implementing this procedure.
- 4.3 The President, Technical Director, Director of Administration, Director of Quality Assurance, and Assistant Director for Systems Engineering and Integration (ADSE&I), as well as the cognizant Element Manager or Senior Program Manager (hereinafter referred to as “manager”) comprise the CNWRA SEC. The Director of Quality Assurance also serves as Secretary to this SEC.
- 4.4 The cognizant manager is responsible for helping identify the potential for COI and preparing materials for use by the SEC in evaluating COI concerns. The manager is responsible for posing the appropriate questions to an individual or organization to determine if there is a potential for COI with respect to the client. For NRC funded programs, relevant questions are posed on the AP-001-01 form and Attachment A to this procedure. For other programs and projects, the manager is responsible for formulating appropriate questions.

### 5. CRITERIA

The following fundamental criteria form the basis for evaluating potential COI of individuals and organizations to assure that CNWRA remains COI-free in its support to the NRC and other clients. Note that although these criteria are worded in the past tense, they apply to past, present, and planned future work. If individuals or organizations conduct work that introduces a COI with assignments within the CNWRA, they will be immediately prohibited from continuing the CNWRA work and excluded from further CNWRA work in the area of COI, unless a waiver is obtained consistent with Section 6C of this procedure.

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- 5.1 Past, present, or planned future work for an entity under the regulatory authority of the NRC or other client, including as consultants and subcontractors, creates the potential for COI. Examples include parties to the NWPA other than the NRC, NRC licensees, municipal utilities (e.g., if the client is a water authority), pipeline operators (e.g., if the client is the Office of Pipeline Safety), etc. The potential for COI shall be evaluated as required by Section 6 of this procedure and, if a potential for COI is identified, actions shall be taken in accordance with applicable contract provisions and Section 6.6 of this procedure.
- Generally, concurrent work for a party under the NWPA, other than the NRC, or for an NRC licensee is not permitted.
  - If there is no potential for COI regarding present or planned future work, the potential for COI regarding past work shall be further evaluated using criteria 5.2-5.8.
- 5.2 Organizations and employees or agents acting in their behalf, shall not provide technical or policy reviews or advice on work they directly performed, for which they had management responsibility, or which would result in their being given an unfair competitive advantage.
- 5.3 Individuals shall not provide technical or policy reviews or advice on work they directly performed or for which they had management responsibility.
- 5.4 Individuals and organizations shall not develop or directly support development of technical or policy positions for a regulatory authority that are based principally or substantially on work they directly performed or for which they had management responsibility while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC or any NRC licensee.
- 5.5 Individuals and organizations shall not participate in any CNWRA activity funded by a regulatory authority that is directly related to issues, positions, or decisions for which they have taken a position of advocacy (including as consultants and subcontractors) for a regulated entity, party under the NWPA other than the NRC, or any NRC licensee.
- 5.6 Individuals and organizations may conduct limited original research in technical areas where, in the past, they directly performed work or for which they had management responsibility while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC, or an NRC licensee, provided such previous research was not specific to any site, design, or facility addressed by contracts between SwRI and the NRC or other regulatory authority for work performed by the CNWRA.

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- 5.7 Individuals and organizations may perform analyses and evaluations using methodologies they directly developed or had management responsibility for developing while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC, or an NRC licensee, provided that the methodology has been independently reviewed and approved by the regulator that the CNWRA is supporting, or has been incorporated in a consensus standard.
- 5.8 Individuals and organizations may develop or support development of technical criteria that are based principally or substantially on work they directly performed or for which they had management responsibility while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC, or an NRC licensee, provided that the supporting work has been independently reviewed and approved by the NRC or other regulator that the CNWRA is supporting.
- 5.9 Former NRC employees may perform work, provide aid, counsel, or assist in representing the CNWRA in any proceeding (with regard to work they supervised or directly performed as an employee of the NRC), only after their participation has been reviewed and approved by the Office of General Counsel, NRC, under 18 U.S.C. 207. All former senior NRC employees shall be constrained by the specific prohibitions in place at the time they are considered for employment or a consultancy.
- 5.10 Individuals and organizations may be utilized in other NRC-funded activities of the CNWRA outside the NWPA that the CNWRA management deems appropriate, with concurrence by the NRC CNWRA Program Manager.

## 6. PROCEDURE

The following procedure shall be used by the SEC to evaluate potential for COI, mitigate the effects of such potential for COI, and seek waivers from the requirements of this procedure. This procedure will be applied before any individual or organization first engages in CNWRA activities, before any significantly different assignment is considered that may introduce a potential for COI, and at least annually otherwise.

Former NRC employees may be used only to the extent they comply with Section 5.9.

### A. EVALUATION OF INDIVIDUALS AND ORGANIZATIONS NOT SUBJECT TO FULL REVIEW

In general, this procedure applies to all individuals and organizations conducting work on CNWRA projects and programs. Certain employee classifications and job functions, however, pose no potential for COI.

This section (i) defines the characteristics of job functions that eliminate the potential for COI and (ii) lists applicable employee classifications and job functions that do not require the complete evaluation described under Section 6B of this procedure. Documentation requirements are summarized in Table 1.

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6.1 Individuals or organizations whose job functions are characterized by the following factors do not require the complete evaluation described under Section 6B of this procedure.

- The individual or organization does not provide technical assistance, research, advice, hearing support, positions, or other types of assistance. For example, the contributions of the individual or organization fall outside of those defined in Section C.1.1.3 Commitments of contract NRC-02-97-009.
- The individual or organization does not contribute to the technical substance of work products delivered under contract to the client.
- The individual or organization does not provide technical analyses, interpretations, or judgments that could create a potential for bias.
- The activities of the individual or organization are conducted at the direction of technical staff and managers of the CNWRA who prescribe, control, and monitor all aspects of the work performed through direct oversight, procedures, instructions, drawings, or specifications. Examples include data collection, measurements, production runs of computer codes, sample preparation, and movement and positioning of equipment.

Furthermore, technical staff and managers of the CNWRA, who would provide any testimony required to support hearings or other activities on behalf of the client, prescribe measurement techniques, select standard methods, develop non-standard methods, and specify calibration standards and periods that could affect results obtained.

6.2 Individuals and organizations in the following SwRI classifications perform job functions that are characterized by the factors enumerated in Section 6.1 and, therefore, are not subject to full COI review under Section 6B of this procedure. If individuals in these classifications perform job functions other than those enumerated in Section 6.1 (e.g., a technician develops novel procedures that control the substantive results of the work), the potential for COI must be evaluated in accordance with Section 6B of this procedure.

- Administrative staff (e.g., those classified as AS-1 through AS-7 of the SwRI Career Ladders and Job Guidelines, or equivalent), including but not limited to administrative assistants, administrative coordinators, clerks, data entry operators, expeditors, financial analysts, librarians, procurement specialists, publication assistants, and secretaries.
- Specialist staff (e.g., those classified as SP-1 through SP-5, or equivalent), including but not limited to attorneys, editors, legal assistants, nurses, and technical specialists. Attorneys tasked to work directly on CNWRA projects and programs (i.e., other than in an overhead capability on behalf of SwRI) are subject to COI review under Section 6B of this procedure.

- Technician staff (e.g., those classified as TS-1 through TS-6 and certain PL1, or equivalent), including but not limited to computer administrators, operators and technicians; drafters; fabricators; instrument calibrators, operators, and technicians (e.g., of optical microscopes, scanning electron microscopes, x-ray diffraction systems, and atomic force microscopes); machinists; mechanics; photographers; chemical, electrical, electronics, and mechanical technicians; and welders. Quality assurance, senior designer, and senior programmer staff in the TS and PL classifications generally are subject to COI review under Section 6B of this procedure.
- Supervisor staff, regardless of classification, who assign individuals to projects, maintain utilization, oversee maintenance of facilities and equipment, or conduct administrative activities.

**B. EVALUATION OF INDIVIDUALS AND ORGANIZATIONS SUBJECT TO FULL REVIEW**

The SEC shall perform the evaluations in accordance with the following steps for all individuals and organizations not exempt under 6A. This section applies to SwRI employees, as well as consultants and subcontractors. Documentation requirements are summarized in Table 1.

- 6.3 A manager will identify a required area of expertise and a prospective individual or organization to provide the expertise. This typically will occur when developing or modifying the staffing section of the CNWRA Management Plan, Operations Plans, a proposal, or other planning document. It also may occur as a result of a special request from a client or response to a reallocation meeting.
- 6.4 The manager shall prepare and submit to the SEC an evaluation portfolio containing the following information. Items a-d are primarily information for COI review; items f-h address other business considerations evaluated by the SEC (see Section 4.1); item f may also support any waiver request under Section 6C.
- a. Resumes and complete detailed work history of the prospective individual or organization. The work history must include clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance. Revenue by client as a proportion of total revenue or income of the individual or organization must be provided for the current and preceding three years, and planned future clients and revenue for the next two years.
  - b. A signed letter from the individual or organization attesting to (i) being currently free from COI, (ii) intending to remain free from COI, and (iii) committing to notify the CNWRA and obtain approval before agreeing to undertake other work that may create a potential for COI.
  - c. A completed COI Questionnaire for Preliminary Evaluation of Potential Conflict of Interest, Form AP-001-01 (Attachment 1) or, for clients other than the NRC, answers to other COI-related questions appropriate to the proposed scope of work.

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- d. A brief description of proposed scope of work. In cases where the scope of work is uncertain, the description should reasonably bound the range of anticipated assignments. Because COI can be site, facility, or project specific, the scope should identify these factors, as applicable.
  - e. A brief statement regarding the role of the work in the context of the overall program or contract.
  - f. An assessment of programmatic impact of not using the prospective individual or organization as proposed, including indication of available alternative individuals or organizations.
  - g. Other information required by AP-005, Obtaining Subcontract Services, or AP-006, Obtaining Consultant Services, as applicable.
- 6.5 The SEC shall evaluate any potential for COI using the information provided in the evaluation portfolio and the criteria provided in Section 5. This evaluation may be facilitated by using the flow chart in Figure 1. The President of the CNWRA may delegate evaluation of potential for COI and preparation of a recommendation to a committee member for final action by the committee as a whole.
- 6.6 The SEC shall prepare a brief report of its finding and basis for same.
- a. If no potential for COI is found, the report will be transmitted to the manager for action.
  - b. If the SEC determines that there is a potential for COI, one of the following actions shall be taken.
    - Exclude the individual or organization from projects funded by the client. This approach is generally appropriate in cases where the SEC is convinced there is a COI (i.e., the potential for COI is unlikely to be ruled out by the client), application for a waiver is inappropriate, alternative sources of services are available, and similar situations.

In such cases, the SEC report will document the clients and projects, if any, on which the individual or organization can work.

    - Request a formal review of COI by the client.

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In such cases, the SEC report, evaluation portfolio, and other supporting information will be transmitted to the client by the President of the CNWRA. Supporting information should include, as appropriate, (i) specific factors that mitigate against a COI developing; (ii) specific aspects of the scope of work that eliminate the need for the individual or organization to review his/her/its own work; (iii) information explaining why the work the individual or organization would perform for the client is not the same as or similar to work previously, concurrently, or planned to be conducted for other clients; and (iv) information explaining why the work the individual or organization would perform for the client is not likely to be used in a manner that would give rise to a COI (e.g., why work for the NRC would not be used in a license application for a repository or interim storage facility).

- Request a waiver by the client. This approach is generally appropriate in cases where the SEC is convinced there is a COI (i.e., the potential for COI is unlikely to be ruled out by the client), application for a waiver is appropriate, alternative sources of services are not available, the candidate individual or organization offers unique skills that are not otherwise available, and similar situations.

In such cases, the SEC report, evaluation portfolio, and other supporting information will be transmitted to the client by the President of the CNWRA. Supporting information should include the items delineated in Section 6C of this procedure, as appropriate.

### C. MITIGATION AND WAIVER

In unusual cases, it will be desirable to engage the services of an eminently qualified individual or organization with a potential for COI. The following steps shall be followed when such situations arise.

- 6.7 The SEC shall make a determination based on the evaluations delineated in Section 6B of this procedure concerning whether the benefit outweighs the negative effect of the COI. If so, the SEC shall propose administrative controls to mitigate the effect of such COI and will petition the client for a waiver from the requirements of this procedure. The NRC or other client has sole discretion in granting such waivers on a case-by-case basis. The results of such determination shall be documented.
- 6.8 Proposed means to mitigate a potential for COI may incorporate an appropriate combination of factors that include, but are not limited to (i) independent review and approval by the NRC or other client of the work that creates the potential COI, (ii) incorporation of the work that creates the potential for COI in a consensus standard, and (iii) acceptance of the work that creates the potential for COI by the technical community, as may be demonstrated by its publication, favorable

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review, and implementation in scientific or engineering practice. The selection, implementation, and evaluation concerning the effectiveness of any mitigating factors to be applied in a given situation are NRC or other client decisions. The results of such determination shall be documented.

- 6.9 For the special case of candidates participating in peer reviews, advisory groups, or workshops, proposed means to mitigate a potential for COI may incorporate administrative controls that include, but are not limited to (i) requiring full disclosure and documentation describing relationships, if any, with individuals or organizations that may give rise to actual or potential for COI in the event of a contract/subcontract award, (ii) providing for a balance of differing technical perspectives in selection of peer review or workshop members, (iii) offsetting the potential for COI by selecting a preponderance of members who have no COI, (iv) segregating the individual's comments to facilitate subsequent identification and evaluation of individual bias, (v) requiring individual expression of dissenting opinions, (vi) proscribing the individual from reviewing and commenting on particular portions of the subject matter, and (vii) controlling the end use of the results of such peer review or workshop to preclude an unacceptable programmatic impact. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC or other client decisions. The results of such determination shall be documented.
- 6.10 When submitting a waiver request to the NRC or other client, the CNWRA shall enclose a copy of the proposed statement of work for the candidate individual or organization in question. In addition, the waiver request shall include the resume of the candidate/individual or, in the case of an organization, its current scope of work. Additionally, copies of titles of papers by the individual or organization will be provided to the NRC or other client. In the case of a waiver request for an organization, current and projected future work shall be identified along with the funding organization, and a listing of relevant papers/articles that have been published under the organization's name.
- 6.11 Waiver actions are taken at the sole discretion of the NRC or other client. In the case of NRC, such actions are taken consistent with the requirements of NRC Acquisition Regulation 2009.570-9. Such actions are strictly limited to those situations in which (i) the work to be performed under the contract is vital to the NRC program, (ii) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest, and (iii) contractual review and surveillance methods can be employed by the NRC to neutralize the conflict.

## 7. RECORDS

All items identified as documentation within this procedure shall be maintained in accordance with the requirements of Section 17 of the CNWRA Quality Assurance Manual and Table 1 of implementing procedure QAP-012.

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**Table 1. Summary of Documentation Requirements to Support Evaluation  
Under AP-001**

Document or Information	Individuals and Organizations not Subject to Full Review (Section 6A)	Individuals and Organizations Subject to Full Review (Section 6B)
Résumé (6.4.a, partial)	✓	✓
Complete work history (6.4.a)		✓
Signed COI letter (6.4.b)		✓
Completed COI questionnaire (6.4.c)		✓
Description of proposed scope of work (6.4.d)	✓	✓
Statement of the role of work (6.4.e)		✓
Statement of programmatic impact (6.4.f)		✓
AP-005 or AP-006 information (6.4.g)	✓	✓
Manager assessment memorandum	✓	✓
SEC determination memorandum	✓	✓
Support of request for waiver (6C) (if applicable)		✓

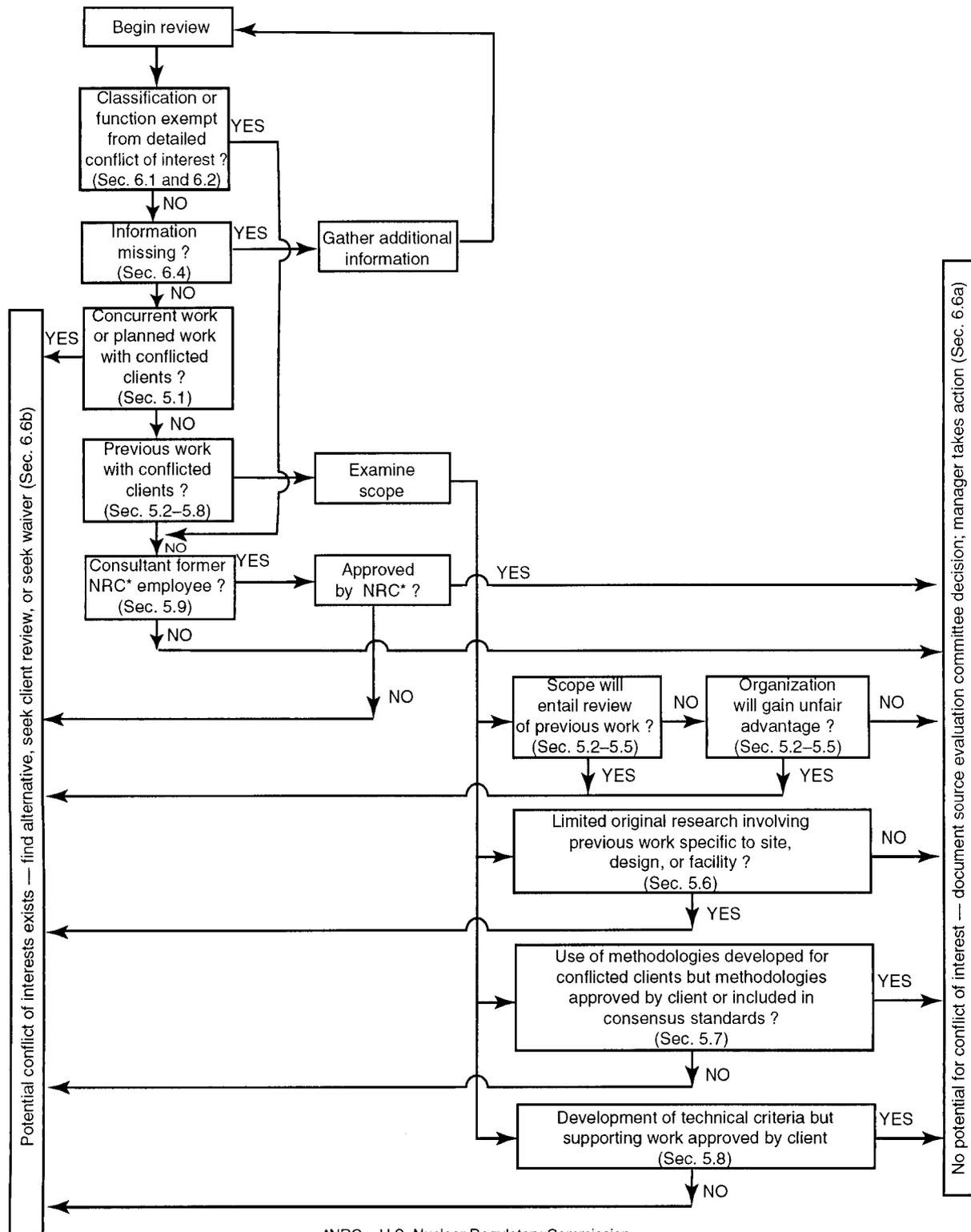


Figure 1. Review Process for Determining Potential for Conflict of Interest



CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES  
QUESTIONNAIRE FOR PRELIMINARY  
EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST  
(Appendix A Attached)

Name: \_\_\_\_\_ Social Security Number \_\_\_\_\_

A. GENERAL BACKGROUND RELATED TO DOE ACTIVITIES

- 1. Have you worked, are you working, or do you plan to work on activities directly or indirectly funded by the U.S. Department of Energy (DOE)? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing of papers which resulted from such activities, as appropriate (attach additional sheets, if necessary).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 2. Have you worked, are you working, or do you plan to work on activities directly or indirectly funded by the DOE that were related to the commercial nuclear fuel cycle? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. BACKGROUND RELATED TO DOE HIGH-LEVEL WASTE (HLW) ACTIVITIES

- 3. Have you worked, are you working, or do you plan to work on activities directly or indirectly funded by the DOE that were related to the processing of defense or commercial high-level nuclear wastes into forms for subsequent disposal (such as borosilicate glass)? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 4. Have you participated in or managed, are you participating in or managing, or do you plan to participate in or manage activities directly or indirectly funded by the DOE that had the purpose of developing a technical consensus or technical criteria, or of establishing a uniform methodology related to evaluation of HLW disposal? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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ATTACHMENT 1

QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST (Cont'd)

5. Have you participated in or managed, are you participating in or managing, or do you plan to participate or manage activities directly or indirectly funded by the DOE that had the purpose of formulating policy? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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6. Have you assumed a position of advocacy regarding issues, positions, or decisions of the DOE in matters related to the commercial nuclear fuel cycle, commercial HLW, or defense HLW? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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7. Provide a complete list of all of your publications that you have reason to believe could be used in supporting DOE application to construct a repository in the tuffaceous rocks at Yucca Mountain in the state of Nevada (attach additional sheets as necessary).

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C. BACKGROUND RELATED TO HLW ACTIVITIES OF OTHER AGENCIES

8. Identify any work of the types listed in items 1 through 7 above which you performed, are performing, or plan to perform for other parties to the Nuclear Waste Policy Act, including affected states, tribes, and other groups that may have acted as advocates of or interveners to the development of a HLW repository (Attach additional sheets as necessary).

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D. BACKGROUND RELATED TO OTHER NRC LICENSING ACTIVITIES

9. Identify any work which you performed, are performing, or plan to perform for a licensee for low-level waste disposal or contractor to such organization. Include work on low-level waste disposal facilities licensed directly by NRC or under Agreement State Provisions.

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10. Identify any work which you performed, are performing, or plan to perform for a NRC licensee or license applicant, or contractor to such organization, including, but not limited to, uranium recovery and site decommissioning management plan projects.

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QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST (Cont'd)

11. Have you conducted, are you conducting, or do you plan to conduct any work directly or indirectly related to the topics listed below (other than work already described under items 1 through 10)?

(i) Nuclear Waste Storage, Transportation, and Disposal? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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(ii) Uranium Recovery [Uranium Mining] (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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(iii) Three-Mile Island Fuel or Fuel Debris, Naval Fuel, Research Reactor Fuel, Foreign Reactor Fuel (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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(iv) Nuclear Site Decommissioning (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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12. Provide list of clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance. Provide revenue by client as a proportion of total revenue or income of the individual or organization for the current and preceding three years. **If none, state "NONE."**

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QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST (Cont'd)

13. Provide list of planned future clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance. Provide revenue by planned future clients as a proportion of total revenue or income of the individual or organization for the next two years. **If none, state "NONE."**

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To assist you in complying with this request, for each set of topics above, Appendix A lists associated organizations, locations, and laws, regulations, and rules. Please refer to these lists as necessary to help you identify activities that may be related to the areas of possible COI for CNWRA.

The information provided on this form is to the best of my knowledge true and accurate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Topics:**

Nuclear Waste Storage, Transportation, Disposal, Monitored Retrievable Storage, Central Interim Storage, and other related topics

**Organizations and Locations:**

ABB Atom, Babcock and Wilcox, Battelle, Bechtel, Booz Allen, Brunswick, British Nuclear Fuels, Chew and Associates, Chem Nuclear, Dames & Moore, Duke Engineering, Envirocare, Fluor-Daniel, EG&G, Fort St. Vrain, Foster Wheeler Energy Applications, Framatome Cogema Fuels, General Atomics Technologies Corp., General Electric Company, General Nuclear Systems Inc., Golder Associates, H.B. Robinson, Holtech Corp., Kaiser-Hill, Lockheed-Martin Advanced Environmental Systems, Los Alamos Technical Associates, Louisiana Energy Services, Nuclear Assurance Corp., Nuclear Fuel Services Inc., Pacific Nuclear Fuel Services Inc., Pacific Sierra Nuclear Associates, Parsons, Private Fuel Storage Limited Liability Company, Rogers and Associates, Rust Environmental Federal Services, Scientific Applications International Corp., Scientific Ecology Group Inc., Siemens, Transnuclear Inc., TRW, Waste Isolation Pilot Plant, United States Enrichment Corp., Vectra Technologies Inc., Waste Management Inc., Westinghouse Safety Management Solutions, Woodward-Clyde Federal Services, Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Raytheon, Ebasco

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 51, 10 CFR Part 60, 10 CFR Part 63, 10 CFR Part 72, 10 CFR Part 76, 40 CFR Part 191, 40 CFR Part 194 and 40 CFR Part 197; Nuclear Waste Policy Act of 1982, as amended

**Topics:**

Uranium Recovery [Uranium Mining], and other related topics

**Organizations and Locations:**

Kennecott Uranium Company; Quivira Mining Company; Atlantic Richfield Company; UNC Mining and Milling; Hydro Resources, Inc.; Sohio Western Mining Company; Homestake Mining Company; Crow Butte Resources, Inc.; Rio Algom Mining Corporation; Atlas Corporation; Plateau Resources Limited; Bear Creek Uranium; UMETCO Minerals Corporation; American Nuclear Corporation; U.S. Energy Corporation; Energy Fuels Nuclear, Inc.; Power Resources, Inc.; Exxon Corporation; Cogema Mining, Inc.; Pathfinder Mines Corporation; Petrotomics Company; Western Nuclear, Inc.

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 40, 10 CFR Part 41, 10 CFR Part 20, and 40 CFR Part 192; Uranium Mill Tailings Radiation and Control Act (UMTRCA)

**Topics:**

Three-Mile Island Fuel or Fuel Debris; Naval Fuel, Research Reactor Fuel; Foreign Reactor Fuel, and other related topics

**Organizations and Locations:**

Babcock and Wilcox; EG&G, General Electric Company; Holtech Corp.; Idaho National Engineering and Environmental Laboratory; Lawrence Livermore National Laboratory; Lockheed-Martin Advanced Environmental Systems; Los Alamos National Laboratory; Woodward-Clyde Consultants; Woodward-Clyde Federal Services; Agbabian Associates; Allied Chemical Corporation; Scientific Applications International Corp.; Sandia National Laboratories; Vectra Technologies, Inc.; Nuclear Packaging, Inc., WINCO, Rogers and Associates

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 72, and 10 CFR Part 100; National Environmental Policy Act of 1969 (NEPA)

**Topics:**

Nuclear Site Decommissioning, and other related topics

**Organizations and Locations:**

AAR Manufacturing; Advanced Medical Systems; American Ecology, Inc.; Babcock and Wilcox; B.R. Chemicals of America, Inc.; Cabot Corporation; Chemetron Corporation; Clevite Corporation; Dow Chemical Company; Earth Sciences Consultants, Inc.; Elkem Metals Company; Envirocare of Utah; Fansteel, Inc.; Fort St. Vrain; General Atomics Technologies Corporation; Heritage Minerals, ICF Kaiser Engineers, Inc.; Kaiser-Hill, Jefferson Proving Ground; Kaiser Aluminum Specialty Products; Kerr-McGee; Lake City Army Ammunition Plant; Minnesota Mining and Manufacturing Company; Molycorp, Inc.; Pacific Northwest National Laboratory; Permagrain Products, Inc.; Pesse Company; METCOA; RMI Titanium Company; Sandia National Laboratories; SCA Services, Inc.; Schott Glass Tech., Inc.; Science Applications International Corporation; Scientific Ecology Group, Inc.; Sequoyah Fuels Corporation; Shieldalloy Metallurgical Corporation; Tenera, Texas Instruments, Incorporated; TRW; U.S. Ecology; West Valley Demonstration Project; Westinghouse Electric Corporation; Whittaker Corporation, Westinghouse Safety Management Solutions

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 70, and 10 CFR Part 72, 40 CFR Part 141; National Environmental Policy Act of 1969 (NEPA); Radiological Criteria for License Termination (final rule); Interim National Drinking Water Regulations; West Valley Demonstration Act

**Topics:**

DOE Civilian and Defense Programs Related to Reprocessing of Nuclear Materials, and other related topics

**Organizations and Locations:**

Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Dames & Moore, Westinghouse Savannah River Company, Science Applications International Corporation, Flour-Daniel, British Nuclear Fuels

**Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, 10 CFR Part 61, and 10 CFR Part 70.

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Title

EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST

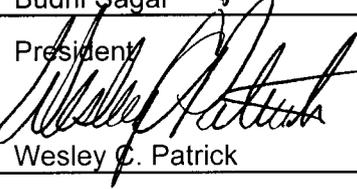
EFFECTIVITY

Revision 6 of this procedure became effective on 01/31/2003. This procedure consists of the pages and changes listed below.

<u>Page No.</u>	<u>Change No.</u>	<u>Date Effective</u>
All	0	01/31/2003

**SUPERSEDED**

Supersedes Procedure No. AP-001 Revision 5, Change 0

Approvals			
Written by	Date	Concurrence Review	Date
 Bruce Mabrito	1/28/2003	 Budhi Sagar	1/28/2003
Quality Assurance	Date	President	Date
 Mark Ehnstrom	1/28/03	 Wesley C. Patrick	1/28/2003

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**EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST**

1. INTRODUCTION

The need to avoid conflict of interest (COI) in conducting technical assistance and research programs was a principal reason for the U.S. Nuclear Regulatory Commission (NRC) establishing the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Contract No. NRC-02-02-012, Section C.1.1.2 and other contracts). Although initial concerns regarding COI were restricted to CNWRA work under the Nuclear Waste Policy Act (NWPA), similar concerns relate to CNWRA support of NRC in non high-level waste (HLW) programs. Many prospective CNWRA employees, other Southwest Research Institute® (SwRI®) personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA may now work or may in the past have worked for the U. S. Department of Energy (DOE), its contractors, other affected parties under the NWPA, or other U. S. Nuclear Regulatory Commission (NRC) licensees and their contractors. Past, present, or planned future work for these parties introduces the potential for COI that could delay or otherwise jeopardize NRC licensing activities. In addition, all performing individuals and organizations must be appropriately qualified (e.g., immigration status; security clearance, if appropriate) to access information required to execute the assigned scope of work.

Individual and organizational conflicts of interest also are possible with other contracts, such as those with domestic and foreign private industries, foreign governments, and other domestic (state and federal) governments. This procedure is used to evaluate the potential for and to avoid the occurrence of COI in all CNWRA activities.

Selection of individuals and organizations to perform work for the NRC and other clients is accomplished in accordance with the applicable sections of Southwest Research Institute's "Operating Policies and Procedures" (OPP), "Employment Manual" of the Human Resources Department (HRD), "Purchasing Policies and Procedures," "Compliance Program," and "Technology Control Plan." In matters related to access to classified, sensitive, export-controlled, and similar information, the CNWRA will coordinate its determination with the SwRI Security Department (SD), Legal Department (LD), HRD, and the Purchasing Department (PD). The LD, however, will make the final determination.

2. PURPOSE AND SCOPE

The purpose of this procedure is to provide fundamental criteria and a means for formally documenting CNWRA management evaluations of potential for COI among current and prospective CNWRA employees, other SwRI personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA (hereinafter referred to as "individuals and organizations"). This will ensure that no COI arises, or that the occurrence of such is effectively mitigated, so that it is demonstrably clear that the

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CNWRA, its staff, and all personnel and organizations used to support the NRC in fulfillment of its regulatory mission provide research results, technical assistance, and advice that are technically sound, objective, and impartial. This procedure is developed in the context of and meets the intent of the provisions of contracts with all clients of the CNWRA.

This procedure applies only to personnel and organizations who are or may become engaged in management, technical assistance, technical review, and research activities of the CNWRA. It is first used before an individual or organization is allowed to engage in CNWRA activities, and prior to employment as CNWRA staff. Subsequently, it is applied whenever an individual or organization is considered for a significantly different assignment that may introduce a potential for COI not previously considered and at least annually absent such changes in assignments.

Because the COI evaluation process elicits substantially all of the information required, AP-001 is used to guide (i) the overall source evaluation process, (ii) consideration of access to certain types of information, and (iii) related business considerations.

3. DEFINITIONS

Employed—A relationship exists whereby payment or similar consideration is received for services rendered. For purposes of this procedure, the term encompasses consultant and subcontractor relationships, as well as traditional employer-employee arrangements. The ultimate or original source of the funding must be known to accurately evaluate the potential for COI.

Individual COI—A relationship exists whereby an individual has past, present, or planned future interests related to the work to be performed for the CNWRA, including work for others, that may (i) diminish his or her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) result in an unfair competitive advantage, or (iii) otherwise result in the CNWRA not being able to support future NRC or other client activities because of a COI. The ultimate or original source of funding must be determined to support an evaluation of the potential for COI. If the original source of funds is a conflicted organization, the potential for COI remains, regardless of how many tiers of subcontracting may separate the individual from that source.

NRC Licensee—An individual or organization subject to licensing or certification under NRC regulatory authority is considered an NRC licensee. Licensing or certification activities of concern in this procedure include but are not limited to those authorized under the NWPA, Low Level Radioactive Waste Policy Act (LLRWPA), the Uranium Mill Tailings Radiation Control Act (UMTRCA), and the West Valley Demonstration Act (WVDA), as well as site decommissioning. For purposes of this procedure, the term NRC licensee is extended to include individuals and organizations that have contracted with the party that is actually licensed or certified by the NRC.

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Organizational COI—A relationship exists whereby an organization—whether it is an independent entity or an affiliate unit of another organization—has past, present, or planned future interests related to the work to be performed for the CNWRA, including work for others, that may (i) diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) result in its being given an unfair competitive advantage, or (iii) otherwise result in the CNWRA not being able to support future NRC or other client activities because of a COI. The ultimate or original source of funding must be determined to support an evaluation of the potential for COI. If the original source of funds is a conflicted organization, the potential for COI remains, regardless of how many tiers of subcontracting may separate the organization from that source.

Party to the NWPA—The DOE, NRC, affected states and tribes, and other agencies and organizations that the NWPA acknowledges to have a direct role in the licensing proceeding for a HLW repository and/or an interim storage facility authorized under the NWPA are considered parties to the NWPA. Although party standing is defined in 10 CFR Part 2 with respect to the licensing proceeding, COI restrictions on work for parties apply to all activities funded under the NWPA, not just the licensing proceeding.

Potential for COI—A factual situation exists that indicates that a COI may arise. The term “potential for conflict of interest” is used to signify those situations that merit investigation prior to employment or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work—Any technical assistance, technical review, or research activity or management of such activity on behalf of the NRC or other client. Internally funded research and development activities are not considered to be “work” for purposes of this procedure. Past, present, and planned future work are subject to COI evaluation.

Access to Information—Accessibility of certain information by individuals or organizations taking into consideration any security concern.

4. RESPONSIBILITY

4.1 The President of the CNWRA is responsible for promulgating, revising, and evaluating compliance with this procedure. The President presides at meetings of the Source Evaluation Committee (SEC) to evaluate the potential for COI and other matters (e.g., cost, schedule, and quality) related to employment of individuals and organizations. The President, or his designee, will coordinate all matters concerning employment or use of foreign nationals in CNWRA activities with the LD. See Introduction.

4.2 The Technical Director of the CNWRA, in fulfilling responsibilities for identifying and allocating resources, is responsible for implementing this procedure.

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4.3 The President, Technical Director, Director of Administration, Director of Quality Assurance, and Assistant Director for Systems Engineering and Integration (ADSE&I), as well as the cognizant Element Manager or Senior Program Manager (hereinafter referred to as "manager") comprise the CNWRA SEC. The Director of Quality Assurance also serves as Secretary to this SEC.

4.4 The cognizant manager is responsible for helping identify the potential for COI and preparing materials for use by the SEC in evaluating COI concerns. The manager is responsible for posing the appropriate questions to an individual or organization to determine if there is a potential for COI with respect to the client. For NRC funded programs, relevant questions are posed on the AP-001-01 form and Appendix A to this procedure. For other programs and projects, the manager is responsible for formulating appropriate questions.

5. CRITERIA

The following fundamental criteria form the basis for evaluating potential COI of individuals and organizations to assure that CNWRA remains COI-free in its support to the NRC and other clients. Note that although these criteria are worded in the past tense, they apply to past, present, and planned future work. If individuals or organizations conduct work that introduces a COI with assignments within the CNWRA, they will be immediately prohibited from continuing the CNWRA work and excluded from further CNWRA work in the area of COI, unless a waiver is obtained consistent with Section 6C of this procedure.

5.1 Past, present, or planned future work for an entity under the regulatory authority of the NRC or other client, including as consultants and subcontractors, creates the potential for COI. Examples include parties to the NWPA other than the NRC, NRC licensees, municipal utilities (e.g., if the client is a water authority), pipeline operators (e.g., if the client is the Office of Pipeline Safety), etc. The potential for COI shall be evaluated as required by Section 6 of this procedure and, if a potential for COI is identified, actions shall be taken in accordance with applicable contract provisions and Section 6.6 of this procedure.

- Generally, concurrent work for a party under the NWPA, other than the NRC, or for an NRC licensee is not permitted.
- If there is no potential for COI regarding present or planned future work, the potential for COI regarding past work shall be further evaluated using criteria in Sections 5.2-5.8.

5.2 Organizations and employees or agents acting in their behalf, shall not provide technical or policy reviews or advice on work they directly performed, for which they had management responsibility, or which would result in their being given an unfair competitive advantage.

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- 5.3 Individuals shall not provide technical or policy reviews or advice on work they directly performed or for which they had management responsibility.
- 5.4 Individuals and organizations shall not develop or directly support development of technical or policy positions for a regulatory authority that are based principally or substantially on work they directly performed or for which they had management responsibility while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC or any NRC licensee.
- 5.5 Individuals and organizations shall not participate in any CNWRA activity funded by a regulatory authority that is directly related to issues, positions, or decisions for which they have taken a position of advocacy (including as consultants and subcontractors) for a regulated entity, party under the NWPA other than the NRC, or any NRC licensee.
- 5.6 Individuals and organizations may conduct limited original research in technical areas where, in the past, they directly performed work or for which they had management responsibility while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC, or an NRC licensee, provided such previous research was not specific to any site, design, or facility addressed by contracts between SwRI and the NRC or other regulatory authority for work performed by the CNWRA.
- 5.7 Individuals and organizations may perform analyses and evaluations using methodologies they directly developed or had management responsibility for developing while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC, or an NRC licensee, provided that the methodology has been independently reviewed and approved by the regulator that the CNWRA is supporting, or has been incorporated in a consensus standard.
- 5.8 Individuals and organizations may develop or support development of technical criteria that are based principally or substantially on work they directly performed or for which they had management responsibility while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC, or an NRC licensee, provided that the supporting work has been independently reviewed and approved by the NRC or other regulator that the CNWRA is supporting.
- 5.9 Former NRC employees may perform work, provide aid, counsel, or assist in representing the CNWRA in any proceeding (with regard to work they supervised or directly performed as an employee of the NRC), only after their participation has been reviewed and approved by the Office of General Counsel, NRC, under 18 U.S.C. 207. All former senior NRC employees shall be constrained by the specific prohibitions in place at the time they are considered for employment or a consultancy.

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5.10 Individuals and organizations may be utilized in other NRC-funded activities of the CNWRA outside the NWPA that the CNWRA management deems appropriate, with concurrence by the NRC CNWRA Program Manager.

6. PROCEDURE

The following procedure (summarized in the flowchart in Figure 1) shall be used by the SEC to evaluate potential for COI, mitigate the effects of such potential for COI, and seek waivers from the requirements of this procedure. This procedure will be applied before any individual or organization first engages in CNWRA activities, before any significantly different assignment is considered that may introduce a potential for COI, and at least annually otherwise.

A CNWRA manager will enlist the support of the SD, LD and/or the HRD, via the CNWRA President or his designee, to determine whether any CNWRA staff member, prospective employee, consultant, subcontractor staff member, or existing SwRI employee from another division has the necessary documentation or approvals/authorizations to access certain documents. Access to certain information is dependent on citizenship, immigration status, export control, security clearance, and other criteria (as summarized in the flowchart in Figure 2).

Former NRC employees may be used only to the extent they comply with Section 5.9.

A. EVALUATION OF INDIVIDUALS AND ORGANIZATIONS NOT SUBJECT TO FULL REVIEW

In general, this procedure applies to all individuals and organizations conducting work on CNWRA projects and programs. Certain employee classifications and job functions, however, pose no potential for COI.

This section (i) defines the characteristics of job functions that eliminate the potential for COI and (ii) lists applicable employee classifications and job functions that do not require the complete evaluation described under Section 6B of this procedure. Documentation requirements are summarized in Table 1.

6.1 Individuals or organizations whose job functions are characterized by the following factors do not require the complete evaluation described under Section 6B of this procedure.

- The individual or organization does not provide technical assistance, research, advice, hearing support, positions, or other types of assistance. For example, the contributions of the individual or organization fall outside of those defined in Section C.1.1.3 Commitments of contract NRC-02-02-012.
- The individual or organization does not contribute to the technical substance of work products delivered under contract to the client.

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- The individual or organization does not provide technical analyses, interpretations, or judgments that could create a potential for bias.
- The activities of the individual or organization are conducted at the direction of technical staff and managers of the CNWRA who prescribe, control, and monitor all aspects of the work performed through direct oversight, procedures, instructions, drawings, or specifications. Examples include data collection, measurements, production runs of computer codes, sample preparation, and movement and positioning of equipment.

Furthermore, technical staff and managers of the CNWRA, who would provide any testimony required to support hearings or other activities on behalf of the client, prescribe measurement techniques, select standard methods, develop non-standard methods, and specify calibration standards and periods that could affect results obtained.

6.2 Individuals and organizations in the following SwRI classifications perform job functions that are characterized by the factors enumerated in Section 6.1 and, therefore, are not subject to full COI review under Section 6B of this procedure. If individuals in these classifications perform job functions other than those enumerated in Section 6.1 (e.g., a technician develops novel procedures that control the substantive results of the work), the potential for COI must be evaluated in accordance with Section 6B of this procedure.

- Administrative staff (e.g., those classified as AS-1 through AS-7 of the SwRI Career Ladders and Job Guidelines, or equivalent), including but not limited to administrative assistants, administrative coordinators, clerks, data entry operators, expeditors, financial analysts, librarians, procurement specialists, publication assistants, and secretaries.
- Specialist staff (e.g., those classified as SP-1 through SP-5, or equivalent), including but not limited to attorneys, editors, legal assistants, nurses, and technical specialists. Attorneys tasked to work directly on CNWRA projects and programs (i.e., other than in an overhead capability on behalf of SwRI) are subject to COI review under Section 6B of this procedure.
- Technician staff (e.g., those classified as TS-1 through TS-6 and certain PL1, or equivalent), including but not limited to computer administrators, operators and technicians; drafters; fabricators; instrument calibrators, operators, and technicians (e.g., of optical microscopes, scanning electron microscopes, x-ray diffraction systems, and atomic force microscopes); machinists; mechanics; photographers; chemical, electrical, electronics, and mechanical technicians; and welders. Quality assurance, senior designer, and senior programmer staff in the TS and PL classifications generally are subject to COI review under Section 6B of this procedure.

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- Supervisor staff, regardless of classification, who assign individuals to projects, maintain utilization, oversee maintenance of facilities and equipment, or conduct administrative activities.

**B. EVALUATION OF INDIVIDUALS AND ORGANIZATIONS SUBJECT TO FULL REVIEW**

The SEC shall perform the evaluations in accordance with the following steps for all individuals and organizations not exempt under 6A. This section applies to SwRI employees, as well as consultants and subcontractors. Documentation requirements are summarized in Table 1.

- 6.3 A manager will identify a required area of expertise and a prospective individual or organization to provide the expertise. This typically will occur when developing or modifying the staffing section of the CNWRA Management Plan, Operations Plans, a proposal, or other planning document. It also may occur as a result of a special request from a client or response to a reallocation meeting.
- 6.4 The manager shall prepare and submit to the SEC an evaluation portfolio containing the following information. Items a–d are primarily information for COI review; items e–g address other business considerations evaluated by the SEC (see Section 4.1); item f may also support any waiver request under Section 6C.
- a. Resumes and complete detailed work history of the prospective individual or organization. The work history must include clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance. Revenue by client as a proportion of total revenue or income of the individual or organization must be provided for the current and preceding three years, and planned future clients and revenue for the next two years.
  - b. A signed letter from the individual or organization attesting to (i) being currently free from COI, and (ii) intending to remain free from COI and committing to notify the CNWRA and obtain approval before agreeing to undertake other work that may create a potential for COI.
  - c. A completed COI Questionnaire for Preliminary Evaluation of Potential Conflict of Interest, Form AP-001-01 (Attachment 1) or, for clients other than the NRC, answers to other COI-related questions appropriate to the proposed scope of work.
  - d. A brief description of proposed scope of work. In cases where the scope of work is uncertain, the description should reasonably bound the range of anticipated assignments. Because COI can be site, facility, or project specific, the scope should identify these factors, as applicable.

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- e. A brief statement regarding the role of the work in the context of the overall program or contract.
- f. An assessment of programmatic impact of not using the prospective individual or organization as proposed, including indication of available alternative individuals or organizations.
- g. Other information required by AP-005, Obtaining Subcontract Services, or AP-006, Obtaining Consultant Services, as applicable.

6.5 The SEC shall evaluate any potential for COI using the information provided in the evaluation portfolio and the criteria provided in Section 5. This evaluation may be facilitated by using the flow chart in Figure 1. The President of the CNWRA may delegate evaluation of potential for COI and preparation of a recommendation to a committee member for final action by the committee as a whole.

6.6 The SEC shall prepare a brief report of its finding and basis for same.

- a. If no potential for COI is found, the report will be transmitted to the manager for action.
- b. If the SEC determines that there is a potential for COI, one of the following actions shall be taken.
  - Exclude the individual or organization from projects funded by the client. This approach is generally appropriate in cases where the SEC is convinced there is a COI (i.e., the potential for COI is unlikely to be ruled out by the client), application for a waiver is inappropriate, alternative sources of services are available, and similar situations.

In such cases, the SEC report will document the clients and projects, if any, on which the individual or organization can work.

- Request a formal review of COI by the client.

In such cases, the SEC report, evaluation portfolio, and other supporting information will be transmitted to the client by the President of the CNWRA. Supporting information should include, as appropriate, (i) specific factors that mitigate against a COI developing; (ii) specific aspects of the scope of work that eliminate the need for the individual or organization to review his/her/its own work; (iii) information explaining why the work the individual or organization would perform for the client is not the same as or similar to work previously, concurrently, or planned to be conducted for other clients; and (iv) information explaining why the work the individual or organization would perform for the client is not likely to be used in a manner that would give rise

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to a COI (e.g., why work for the NRC would not be used in a license application for a repository or interim storage facility).

- Request a waiver by the client. This approach is generally appropriate in cases where the SEC is convinced there is a COI (i.e., the potential for COI is unlikely to be ruled out by the client), application for a waiver is appropriate, alternative sources of services are not available, the candidate individual or organization offers unique skills that are not otherwise available, and similar situations.

In such cases, the SEC report, evaluation portfolio, and other supporting information will be transmitted to the client by the President of the CNWRA. Supporting information should include the items delineated in Section 6C of this procedure, as appropriate.

C. MITIGATION AND WAIVER

In unusual cases, it will be desirable to engage the services of an eminently qualified individual or organization with a potential for COI. The following steps shall be followed when such situations arise.

- 6.7 The SEC shall make a determination based on the evaluations delineated in Section 6B of this procedure concerning whether the benefit outweighs the negative effect of the COI. If so, the SEC shall propose administrative controls to mitigate the effect of such COI and will petition the client for a waiver from the requirements of this procedure. The NRC or other client has sole discretion in granting such waivers on a case-by-case basis. The results of such determination shall be documented.
- 6.8 Proposed means to mitigate a potential for COI may incorporate an appropriate combination of factors that include, but are not limited to (i) independent review and approval by the NRC or other client of the work that creates the potential COI, (ii) incorporation of the work that creates the potential for COI in a consensus standard, and (iii) acceptance of the work that creates the potential for COI by the technical community, as may be demonstrated by its publication, favorable review, and implementation in scientific or engineering practice. The selection, implementation, and evaluation concerning the effectiveness of any mitigating factors to be applied in a given situation are NRC or other client decisions. The results of such determination shall be documented.
- 6.9 For the special case of candidates participating in peer reviews, advisory groups, or workshops, proposed means to mitigate a potential for COI may incorporate administrative controls that include, but are not limited to (i) requiring full disclosure and documentation describing relationships, if any, with individuals or organizations that may give rise to actual or potential for COI in the event of a contract/subcontract award,

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(ii) providing for a balance of differing technical perspectives in selection of peer review or workshop members, (iii) offsetting the potential for COI by selecting a preponderance of members who have no COI, (iv) segregating the individual's comments to facilitate subsequent identification and evaluation of individual bias, (v) requiring individual expression of dissenting opinions, (vi) proscribing the individual from reviewing and commenting on particular portions of the subject matter, and (vii) controlling the end use of the results of such peer review or workshop to preclude an unacceptable programmatic impact. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC or other client decisions. The results of such determination shall be documented.

6.10 When submitting a waiver request to the NRC or other client, the CNWRA shall enclose a copy of the proposed statement of work for the candidate individual or organization in question. In addition, the waiver request shall include the resume of the candidate/individual or, in the case of an organization, its current scope of work. Additionally, copies of titles of papers by the individual or organization will be provided to the NRC or other client. In the case of a waiver request for an organization, current and projected future work shall be identified along with the funding organization, and a listing of relevant papers/articles that have been published under the organization's name.

6.11 Waiver actions are taken at the sole discretion of the NRC or other client. In the case of NRC, such actions are taken consistent with the requirements of NRC Acquisition Regulation 2009.570-9. Such actions are strictly limited to those situations in which (i) the work to be performed under the contract is vital to the NRC program, (ii) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest, and (iii) contractual review and surveillance methods can be employed by the NRC to neutralize the conflict.

7. RECORDS

All items identified as documentation within this procedure shall be maintained in accordance with the requirements of Section 17 of the CNWRA Quality Assurance Manual and Table 1 of implementing procedure QAP-012.

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**Table 1. Summary of Documentation Requirements to Support Evaluation  
Under AP-001**

Document or Information	Individuals and Organizations not Subject to Full Review (Section 6A)	Individuals and Organizations Subject to Full Review (Section 6B)
Résumé (6.4.a, sufficient to establish technical qualifications)	✓	✓
Complete work history (6.4.a)		✓
Signed COI letter (6.4.b)		✓
Completed COI questionnaire (6.4.c)		✓
Description of proposed scope of work (6.4.d)	✓	✓
Statement of the role of work (6.4.e)		✓
Statement of programmatic impact (6.4.f)		✓
AP-005 or AP-006 information (6.4.g)	✓	✓
Manager assessment memorandum	✓	✓
SEC determination memorandum	✓	✓
Support of request for waiver (6C) (if applicable)		✓
Foreign National Determination (6A and 6.4)	✓	✓

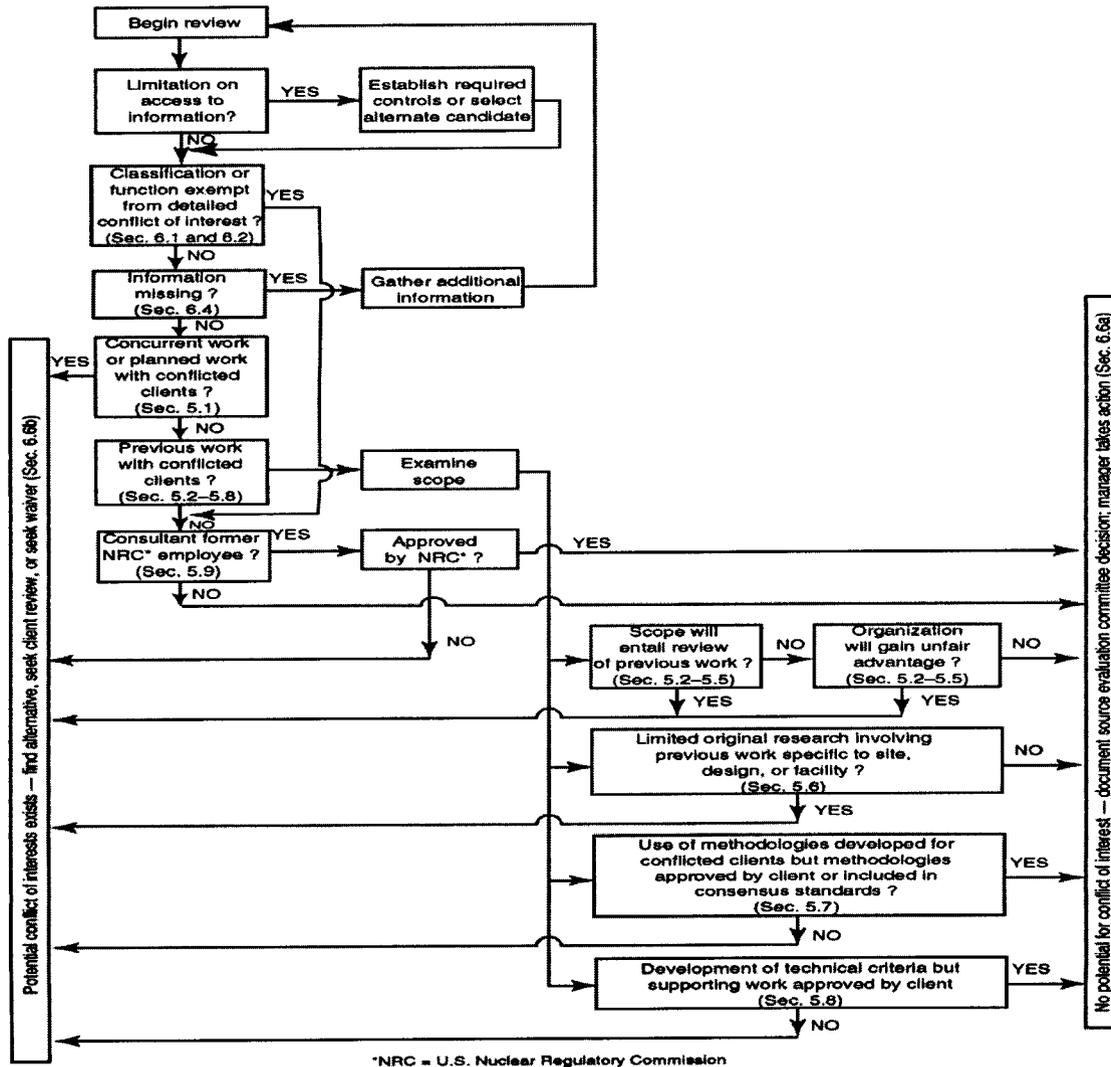
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**Figure 1. Review Process for Determining Potential for Conflict of Interest**

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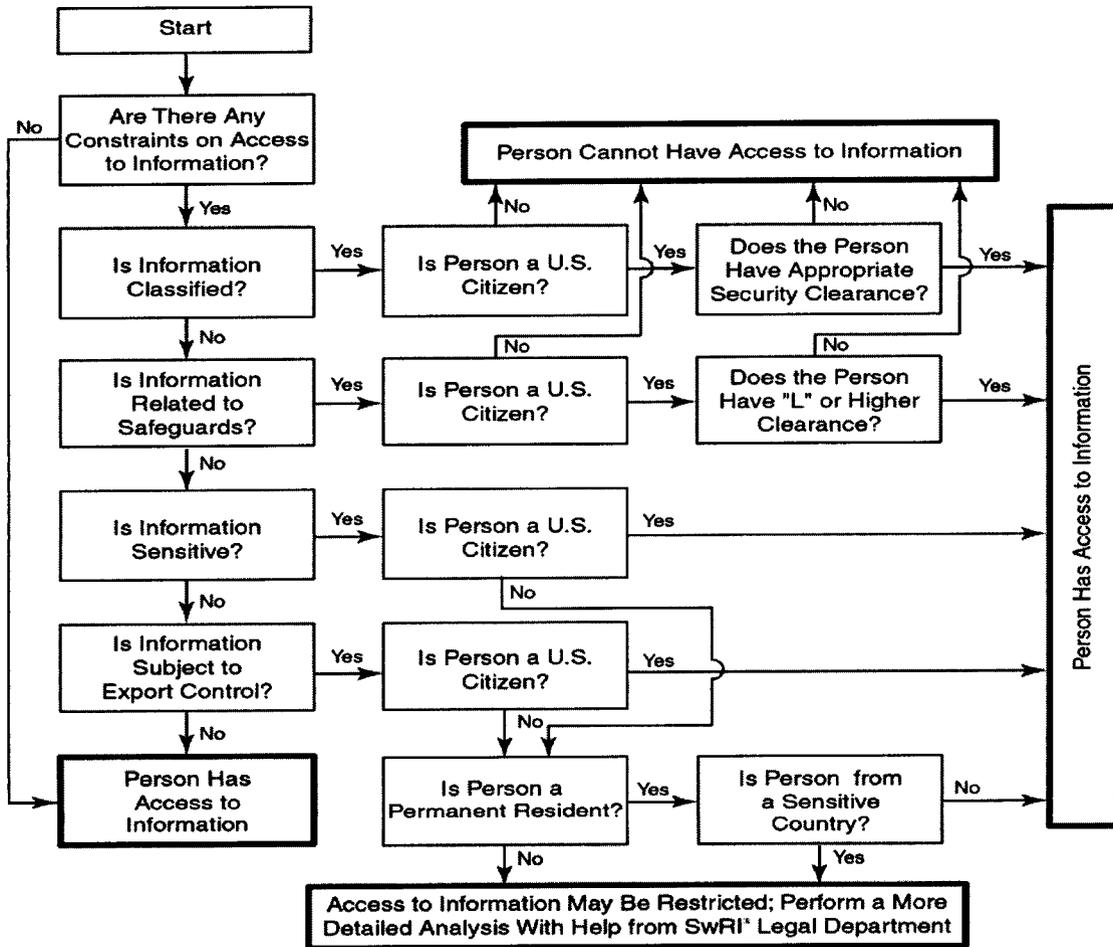


Figure 2. Evaluation of Access to Information by Staff, Consultants, and Subcontractor Persons



ATTACHMENT 1

CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES  
QUESTIONNAIRE FOR PRELIMINARY  
EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST  
(Appendix A Attached)

Name: \_\_\_\_\_ Social Security Number \_\_\_\_\_

A. GENERAL BACKGROUND RELATED TO DOE ACTIVITIES

1. Have you worked, are you working, or do you plan to work on activities directly or indirectly funded by the U.S. Department of Energy (DOE)? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing of papers which resulted from such activities, as appropriate (attach additional sheets, if necessary).

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2. Have you worked, are you working, or do you plan to work on activities directly or indirectly funded by the DOE that were related to the commercial nuclear fuel cycle? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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SAMPLE

B. BACKGROUND RELATED TO DOE HIGH-LEVEL WASTE (HLW) ACTIVITIES

3. Have you worked, are you working, or do you plan to work on activities directly or indirectly funded by the DOE that were related to the processing of defense or commercial high-level nuclear wastes into forms for subsequent disposal (such as borosilicate glass)? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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4. Have you participated in or managed, are you participating in or managing, or do you plan to participate in or manage activities directly or indirectly funded by the DOE that had the purpose of developing a technical consensus or technical criteria, or of establishing a uniform methodology related to evaluation of HLW disposal? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL FOR  
CONFLICT OF INTEREST (continued)

5. Have you participated in or managed, are you participating in or managing, or do you plan to participate or manage activities directly or indirectly funded by the DOE that had the purpose of formulating policy? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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6. Have you assumed a position of advocacy regarding issues, positions, or decisions of the DOE in matters related to the commercial nuclear fuel cycle, commercial HLW, or defense HLW? (Yes/No). If yes, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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7. Provide a complete list of all of your publications that you have reason to believe could be used in supporting DOE application to construct a repository in the tuffaceous rocks at Yucca Mountain in the state of Nevada (attach additional sheets as necessary).

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C. BACKGROUND RELATED TO HLW ACTIVITIES OF OTHER AGENCIES

8. Identify any work of the types listed in items 1 through 7 above which you performed, are performing, or plan to perform for other parties to the Nuclear Waste Policy Act, including affected states, tribes, and other groups that may have acted as advocates of or interveners to the development of a HLW repository (Attach additional sheets as necessary).

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D. BACKGROUND RELATED TO OTHER NRC LICENSING ACTIVITIES

9. Identify any work which you performed, are performing, or plan to perform for a licensee for low-level waste disposal or contractor to such organization. Include work on low-level waste disposal facilities licensed directly by NRC or under Agreement State Provisions.

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QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL FOR  
CONFLICT OF INTEREST (continued)

10. Identify any work which you performed, are performing, or plan to perform for a NRC licensee or license applicant, or contractor to such organization, including, but not limited to, uranium recovery and site decommissioning management plan projects.

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11. Have you conducted, are you conducting, or do you plan to conduct any work directly or indirectly related to the topics listed below (other than work already described under items 1 through 10)?

- (i) Nuclear Waste Storage, Transportation, and Disposal? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (ii) Uranium Recovery [Uranium Mining] (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (iii) Three-Mile Island Fuel or Fuel Debris, Naval Fuel, Research Reactor Fuel, Foreign Reactor Fuel (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (iv) Nuclear Site Decommissioning (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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SAMPLE

QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL FOR CONFLICT  
OF INTEREST (continued)

12. Provide list of clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance. Provide revenue by client as a proportion of total revenue or income of the individual or organization for the current and preceding three years. **If none, state "NONE."**

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13. Provide list of planned future clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance. Provide revenue by planned future clients as a proportion of total revenue or income of the individual or organization for the next two years. **If none, state "NONE."**

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To assist you in complying with this request, for each set of topics above, Appendix A lists associated organizations, locations, and laws, regulations, and rules. Please refer to these lists as necessary to help you identify activities that may be related to the areas of possible COI for CNWRA.

The information provided on this form is to the best of my knowledge true and accurate.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## Appendix A

### **Topics:**

Nuclear Waste Storage, Transportation, Disposal, Monitored Retrievable Storage, Central Interim Storage, and other related topics

### **Organizations and Locations:**

ABB Atom, Babcock and Wilcox, Battelle, Bechtel, Booz Allen, Brunswick, British Nuclear Fuels, Chew and Associates, Chem Nuclear, Dames & Moore, Duke Engineering, Envirocare, Fluor-Daniel, EG&G, Fort St. Vrain, Foster Wheeler Energy Applications, Framatome Cogema Fuels, General Atomics Technologies Corp., General Electric Company, General Nuclear Systems Inc., Golder Associates, H.B. Robinson, Holtech Corp., Kaiser-Hill, Lockheed-Martin Advanced Environmental Systems, Los Alamos Technical Associates, Louisiana Energy Services, Nuclear Assurance Corp., Nuclear Fuel Services Inc., Pacific Nuclear Fuel Services Inc., Pacific Sierra Nuclear Associates, Parsons, Private Fuel Storage Limited Liability Company, Rogers and Associates, Rust Environmental Federal Services, Scientific Applications International Corp., Scientific Ecology Group Inc., Siemens, Transnuclear Inc., TRW, Waste Isolation Pilot Plant, United States Enrichment Corp., Vectra Technologies Inc., Waste Management Inc., Westinghouse Safety Management Solutions, Woodward-Clyde Federal Services, Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Raytheon, Ebasco

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 51, 10 CFR Part 60, 10 CFR Part 63, 10 CFR Part 72, 10 CFR Part 76, 40 CFR Part 191, 40 CFR Part 194 and 40 CFR Part 197; Nuclear Waste Policy Act of 1982, as amended

### **Topics:**

Uranium Recovery [Uranium Mining], and other related topics

### **Organizations and Locations:**

Kennecott Uranium Company; Quivira Mining Company; Atlantic Richfield Company; UNC Mining and Milling; Hydro Resources, Inc.; Sohio Western Mining Company; Homestake Mining Company; Crow Butte Resources, Inc.; Rio Algom Mining Corporation; Atlas Corporation; Plateau Resources Limited; Bear Creek Uranium; UMETCO Minerals Corporation; American Nuclear Corporation; U.S. Energy Corporation; Energy Fuels Nuclear, Inc.; Power Resources, Inc.; Exxon Corporation; Cogema Mining, Inc.; Pathfinder Mines Corporation; Petrotonics Company; Western Nuclear, Inc.

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 40, 10 CFR Part 41, 10 CFR Part 20, and 40 CFR Part 192; Uranium Mill Tailings Radiation and Control Act (UMTRCA)

### **Topics:**

Three-Mile Island Fuel or Fuel Debris; Naval Fuel, Research Reactor Fuel; Foreign Reactor Fuel, and other related topics

## Appendix A (continued)

### **Organizations and Locations:**

Babcock and Wilcox; EG&G, General Electric Company; Holtech Corp.; Idaho National Engineering and Environmental Laboratory; Lawrence Livermore National Laboratory; Lockheed-Martin Advanced Environmental Systems; Los Alamos National Laboratory; Woodward-Clyde Consultants; Woodward-Clyde Federal Services; Agbabian Associates; Allied Chemical Corporation; Scientific Applications International Corp.; Sandia National Laboratories; Vectra Technologies, Inc.; Nuclear Packaging, Inc., WINCO, Rogers and Associates

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 72, and 10 CFR Part 100; National Environmental Policy Act of 1969 (NEPA)

### **Topics:**

Nuclear Site Decommissioning, and other related topics

### **Organizations and Locations:**

AAR Manufacturing; Advanced Medical Systems; American Ecology, Inc.; Babcock and Wilcox; B.R. Chemicals of America, Inc.; Cabot Corporation; Chemetron Corporation; Clevite Corporation; Dow Chemical Company; Earth Sciences Consultants, Inc.; Elkem Metals Company; Envirocare of Utah; Fansteel, Inc.; Fort St. Vrain; General Atomics Technologies Corporation; Heritage Minerals, ICF Kaiser Engineers, Inc.; Kaiser-Hill, Jefferson Proving Ground; Kaiser Aluminum Specialty Products; Kerr-McGee; Lake City Army Ammunition Plant; Minnesota Mining and Manufacturing Company; Molycorp, Inc.; Pacific Northwest National Laboratory; Permagrain Products, Inc.; Pesse Company; METCOA; RMI Titanium Company; Sandia National Laboratories; SCA Services, Inc.; Schott Glass Tech., Inc.; Science Applications International Corporation; Scientific Ecology Group, Inc.; Sequoyah Fuels Corporation; Shieldalloy Metallurgical Corporation; Tenera, Texas Instruments, Incorporated; TRW; U.S. Ecology; West Valley Demonstration Project; Westinghouse Electric Corporation; Whittaker Corporation, Westinghouse Safety Management Solutions

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 70, and 10 CFR Part 72, 40 CFR Part 141; National Environmental Policy Act of 1969 (NEPA); Radiological Criteria for License Termination (final rule); Interim National Drinking Water Regulations; West Valley Demonstration Act

### **Topics:**

DOE Civilian and Defense Programs Related to Reprocessing of Nuclear Materials, and other related topics

### **Organizations and Locations:**

Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Dames & Moore, Westinghouse Savannah River Company, Science Applications International Corporation, Flour-Daniel, British Nuclear Fuels

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, 10 CFR Part 61, and 10 CFR Part 70

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Title

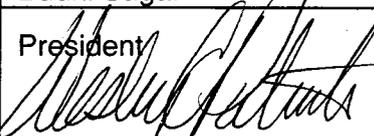
EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST

EFFECTIVITY

Revision 6 of this procedure became effective on 01/31/2003. This procedure consists of the pages and changes listed below.

<u>Page No.</u>	<u>Change No.</u>	<u>Date Effective</u>
1	1	04/07/2003
2-14	0	01/31/2003
15	1	04/07/2003
Attachment 1	0	01/31/2003
Appendix A	0	01/31/2003

Supersedes Procedure No. AP-001 Revision 6, Change 0

Approvals			
Written by	Date	Concurrence Review	Date
 Bruce Mabrito	3/27/2003	 Budhi Sagar	3/26/03
Quality Assurance	Date	President	Date
 Mark Ehnstrom	3/27/03	 Wesley C. Patrick	3/26/2003

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EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST

1. INTRODUCTION

The need to avoid conflict of interest (COI) in conducting technical assistance and research programs was a principal reason for the U.S. Nuclear Regulatory Commission (NRC) establishing the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Contract No. NRC-02-02-012, Section C.1.1.2 and other contracts). Although initial concerns regarding COI were restricted to CNWRA work under the Nuclear Waste Policy Act (NWPA), similar concerns relate to CNWRA support of NRC in non high-level waste (HLW) programs. Many prospective CNWRA employees, other Southwest Research Institute® (SwRI®) personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA may now work or may in the past have worked for the U. S. Department of Energy (DOE), its contractors, other affected parties under the NWPA, or other U. S. Nuclear Regulatory Commission (NRC) licensees and their contractors. Past, present, or planned future work for these parties introduces the potential for COI that could delay or otherwise jeopardize NRC licensing activities. In addition, all performing individuals and organizations must be appropriately qualified (e.g., immigration status; security clearance, if appropriate) to access information required to execute the assigned scope of work.

Individual and organizational conflicts of interest also are possible with other contracts, such as those with domestic and foreign private industries, foreign governments, and other domestic (state and federal) governments. This procedure is used to evaluate the potential for and to avoid the occurrence of COI in all CNWRA activities.

Selection of individuals and organizations to perform work for the NRC and other clients is accomplished in accordance with the applicable sections of Southwest Research Institute's "Operating Policies and Procedures" (OPP), "Employment Manual" of the Human Resources Department (HRD), "Purchasing Policies and Procedures," "Compliance Program," and "Technology Control Plan." In matters related to access to classified, sensitive, export-controlled, and similar information, the CNWRA will coordinate its determination with the SwRI Security Department (SD), Legal Department (LD), HRD, and the Purchasing Department (PD). The LD, however, will make the final determination.

2. PURPOSE AND SCOPE

The purpose of this procedure is to provide fundamental criteria and a means for formally documenting CNWRA management evaluations of potential for COI among current and prospective CNWRA employees, other SwRI personnel performing work for the CNWRA, subcontractors, and consultants to the CNWRA (hereinafter referred to as "individuals and organizations"). This will ensure that no COI arises, or that the occurrence of such is effectively mitigated, so that it is demonstrably clear that the

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CNWRA, its staff, and all personnel and organizations used to support the NRC in fulfillment of its regulatory mission provide research results, technical assistance, and advice that are technically sound, objective, and impartial. This procedure is developed in the context of and meets the intent of the provisions of contracts with all clients of the CNWRA.

This procedure applies only to personnel and organizations who are or may become engaged in management, technical assistance, technical review, and research activities of the CNWRA. It is first used before an individual or organization is allowed to engage in CNWRA activities, and prior to employment as CNWRA staff. Subsequently, it is applied whenever an individual or organization is considered for a significantly different assignment that may introduce a potential for COI not previously considered and at least annually absent such changes in assignments.

Because the COI evaluation process elicits substantially all of the information required, AP-001 is used to guide (i) the overall source evaluation process, (ii) consideration of access to certain types of information, and (iii) related business considerations.

3. DEFINITIONS

Employed—A relationship exists whereby payment or similar consideration is received for services rendered. For purposes of this procedure, the term encompasses consultant and subcontractor relationships, as well as traditional employer-employee arrangements. The ultimate or original source of the funding must be known to accurately evaluate the potential for COI.

Individual COI—A relationship exists whereby an individual has past, present, or planned future interests related to the work to be performed for the CNWRA, including work for others, that may (i) diminish his or her capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) result in an unfair competitive advantage, or (iii) otherwise result in the CNWRA not being able to support future NRC or other client activities because of a COI. The ultimate or original source of funding must be determined to support an evaluation of the potential for COI. If the original source of funds is a conflicted organization, the potential for COI remains, regardless of how many tiers of subcontracting may separate the individual from that source.

NRC Licensee—An individual or organization subject to licensing or certification under NRC regulatory authority is considered an NRC licensee. Licensing or certification activities of concern in this procedure include but are not limited to those authorized under the NHPA, Low Level Radioactive Waste Policy Act (LLRWPA), the Uranium Mill Tailings Radiation Control Act (UMTRCA), and the West Valley Demonstration Act (WVDA), as well as site decommissioning. For purposes of this procedure, the term NRC licensee is extended to include individuals and organizations that have contracted with the party that is actually licensed or certified by the NRC.

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Organizational COI—A relationship exists whereby an organization—whether it is an independent entity or an affiliate unit of another organization—has past, present, or planned future interests related to the work to be performed for the CNWRA, including work for others, that may (i) diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, (ii) result in its being given an unfair competitive advantage, or (iii) otherwise result in the CNWRA not being able to support future NRC or other client activities because of a COI. The ultimate or original source of funding must be determined to support an evaluation of the potential for COI. If the original source of funds is a conflicted organization, the potential for COI remains, regardless of how many tiers of subcontracting may separate the organization from that source.

Party to the NWPA—The DOE, NRC, affected states and tribes, and other agencies and organizations that the NWPA acknowledges to have a direct role in the licensing proceeding for a HLW repository and/or an interim storage facility authorized under the NWPA are considered parties to the NWPA. Although party standing is defined in 10 CFR Part 2 with respect to the licensing proceeding, COI restrictions on work for parties apply to all activities funded under the NWPA, not just the licensing proceeding.

Potential for COI—A factual situation exists that indicates that a COI may arise. The term “potential for conflict of interest” is used to signify those situations that merit investigation prior to employment or assignment of an individual or award of a contract to an organization in order to ascertain whether employment or contract award would give rise to an actual conflict.

Work—Any technical assistance, technical review, or research activity or management of such activity on behalf of the NRC or other client. Internally funded research and development activities are not considered to be “work” for purposes of this procedure. Past, present, and planned future work are subject to COI evaluation.

Access to Information—Accessibility of certain information by individuals or organizations taking into consideration any security concern.

4. RESPONSIBILITY

- 4.1 The President of the CNWRA is responsible for promulgating, revising, and evaluating compliance with this procedure. The President presides at meetings of the Source Evaluation Committee (SEC) to evaluate the potential for COI and other matters (e.g., cost, schedule, and quality) related to employment of individuals and organizations. The President, or his designee, will coordinate all matters concerning employment or use of foreign nationals in CNWRA activities with the LD. See Introduction.
- 4.2 The Technical Director of the CNWRA, in fulfilling responsibilities for identifying and allocating resources, is responsible for implementing this procedure.

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- 4.3 The President, Technical Director, Director of Administration, Director of Quality Assurance, and Assistant Director for Systems Engineering and Integration (ADSE&I), as well as the cognizant Element Manager or Senior Program Manager (hereinafter referred to as "manager") comprise the CNWRA SEC. The Director of Quality Assurance also serves as Secretary to this SEC.
- 4.4 The cognizant manager is responsible for helping identify the potential for COI and preparing materials for use by the SEC in evaluating COI concerns. The manager is responsible for posing the appropriate questions to an individual or organization to determine if there is a potential for COI with respect to the client. For NRC funded programs, relevant questions are posed on the AP-001-01 form and Appendix A to this procedure. For other programs and projects, the manager is responsible for formulating appropriate questions.

5. CRITERIA

The following fundamental criteria form the basis for evaluating potential COI of individuals and organizations to assure that CNWRA remains COI-free in its support to the NRC and other clients. Note that although these criteria are worded in the past tense, they apply to past, present, and planned future work. If individuals or organizations conduct work that introduces a COI with assignments within the CNWRA, they will be immediately prohibited from continuing the CNWRA work and excluded from further CNWRA work in the area of COI, unless a waiver is obtained consistent with Section 6C of this procedure.

- 5.1 Past, present, or planned future work for an entity under the regulatory authority of the NRC or other client, including as consultants and subcontractors, creates the potential for COI. Examples include parties to the NWPA other than the NRC, NRC licensees, municipal utilities (e.g., if the client is a water authority), pipeline operators (e.g., if the client is the Office of Pipeline Safety), etc. The potential for COI shall be evaluated as required by Section 6 of this procedure and, if a potential for COI is identified, actions shall be taken in accordance with applicable contract provisions and Section 6.6 of this procedure.
- Generally, concurrent work for a party under the NWPA, other than the NRC, or for an NRC licensee is not permitted.
  - If there is no potential for COI regarding present or planned future work, the potential for COI regarding past work shall be further evaluated using criteria in Sections 5.2-5.8.
- 5.2 Organizations and employees or agents acting in their behalf, shall not provide technical or policy reviews or advice on work they directly performed, for which they had management responsibility, or which would result in their being given an unfair competitive advantage.

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- 5.3 Individuals shall not provide technical or policy reviews or advice on work they directly performed or for which they had management responsibility.
- 5.4 Individuals and organizations shall not develop or directly support development of technical or policy positions for a regulatory authority that are based principally or substantially on work they directly performed or for which they had management responsibility while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC or any NRC licensee.
- 5.5 Individuals and organizations shall not participate in any CNWRA activity funded by a regulatory authority that is directly related to issues, positions, or decisions for which they have taken a position of advocacy (including as consultants and subcontractors) for a regulated entity, party under the NWPA other than the NRC, or any NRC licensee.
- 5.6 Individuals and organizations may conduct limited original research in technical areas where, in the past, they directly performed work or for which they had management responsibility while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC, or an NRC licensee, provided such previous research was not specific to any site, design, or facility addressed by contracts between SwRI and the NRC or other regulatory authority for work performed by the CNWRA.
- 5.7 Individuals and organizations may perform analyses and evaluations using methodologies they directly developed or had management responsibility for developing while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC, or an NRC licensee, provided that the methodology has been independently reviewed and approved by the regulator that the CNWRA is supporting, or has been incorporated in a consensus standard.
- 5.8 Individuals and organizations may develop or support development of technical criteria that are based principally or substantially on work they directly performed or for which they had management responsibility while employed (including as consultants and subcontractors) by a regulated entity, a party under the NWPA other than the NRC, or an NRC licensee, provided that the supporting work has been independently reviewed and approved by the NRC or other regulator that the CNWRA is supporting.
- 5.9 Former NRC employees may perform work, provide aid, counsel, or assist in representing the CNWRA in any proceeding (with regard to work they supervised or directly performed as an employee of the NRC), only after their participation has been reviewed and approved by the Office of General Counsel, NRC, under 18 U.S.C. 207. All former senior NRC employees shall be constrained by the specific prohibitions in place at the time they are considered for employment or a consultancy.

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5.10 Individuals and organizations may be utilized in other NRC-funded activities of the CNWRA outside the NWPAs that the CNWRA management deems appropriate, with concurrence by the NRC CNWRA Program Manager.

6. PROCEDURE

The following procedure (summarized in the flowchart in Figure 1) shall be used by the SEC to evaluate potential for COI, mitigate the effects of such potential for COI, and seek waivers from the requirements of this procedure. This procedure will be applied before any individual or organization first engages in CNWRA activities, before any significantly different assignment is considered that may introduce a potential for COI, and at least annually otherwise.

A CNWRA manager will enlist the support of the SD, LD and/or the HRD, via the CNWRA President or his designee, to determine whether any CNWRA staff member, prospective employee, consultant, subcontractor staff member, or existing SwRI employee from another division has the necessary documentation or approvals/authorizations to access certain documents. Access to certain information is dependent on citizenship, immigration status, export control, security clearance, and other criteria (as summarized in the flowchart in Figure 2).

Former NRC employees may be used only to the extent they comply with Section 5.9.

A. EVALUATION OF INDIVIDUALS AND ORGANIZATIONS NOT SUBJECT TO FULL REVIEW

In general, this procedure applies to all individuals and organizations conducting work on CNWRA projects and programs. Certain employee classifications and job functions, however, pose no potential for COI.

This section (i) defines the characteristics of job functions that eliminate the potential for COI and (ii) lists applicable employee classifications and job functions that do not require the complete evaluation described under Section 6B of this procedure. Documentation requirements are summarized in Table 1.

6.1 Individuals or organizations whose job functions are characterized by the following factors do not require the complete evaluation described under Section 6B of this procedure.

- The individual or organization does not provide technical assistance, research, advice, hearing support, positions, or other types of assistance. For example, the contributions of the individual or organization fall outside of those defined in Section C.1.1.3 Commitments of contract NRC-02-02-012.
- The individual or organization does not contribute to the technical substance of work products delivered under contract to the client.

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- The individual or organization does not provide technical analyses, interpretations, or judgments that could create a potential for bias.
- The activities of the individual or organization are conducted at the direction of technical staff and managers of the CNWRA who prescribe, control, and monitor all aspects of the work performed through direct oversight, procedures, instructions, drawings, or specifications. Examples include data collection, measurements, production runs of computer codes, sample preparation, and movement and positioning of equipment.

Furthermore, technical staff and managers of the CNWRA, who would provide any testimony required to support hearings or other activities on behalf of the client, prescribe measurement techniques, select standard methods, develop non-standard methods, and specify calibration standards and periods that could affect results obtained.

6.2 Individuals and organizations in the following SwRI classifications perform job functions that are characterized by the factors enumerated in Section 6.1 and, therefore, are not subject to full COI review under Section 6B of this procedure. If individuals in these classifications perform job functions other than those enumerated in Section 6.1 (e.g., a technician develops novel procedures that control the substantive results of the work), the potential for COI must be evaluated in accordance with Section 6B of this procedure.

- Administrative staff (e.g., those classified as AS-1 through AS-7 of the SwRI Career Ladders and Job Guidelines, or equivalent), including but not limited to administrative assistants, administrative coordinators, clerks, data entry operators, expeditors, financial analysts, librarians, procurement specialists, publication assistants, and secretaries.
- Specialist staff (e.g., those classified as SP-1 through SP-5, or equivalent), including but not limited to attorneys, editors, legal assistants, nurses, and technical specialists. Attorneys tasked to work directly on CNWRA projects and programs (i.e., other than in an overhead capability on behalf of SwRI) are subject to COI review under Section 6B of this procedure.
- Technician staff (e.g., those classified as TS-1 through TS-6 and certain PL1, or equivalent), including but not limited to computer administrators, operators and technicians; drafters; fabricators; instrument calibrators, operators, and technicians (e.g., of optical microscopes, scanning electron microscopes, x-ray diffraction systems, and atomic force microscopes); machinists; mechanics; photographers; chemical, electrical, electronics, and mechanical technicians; and welders. Quality assurance, senior designer, and senior programmer staff in the TS and PL classifications generally are subject to COI review under Section 6B of this procedure.

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- Supervisor staff, regardless of classification, who assign individuals to projects, maintain utilization, oversee maintenance of facilities and equipment, or conduct administrative activities.

B. EVALUATION OF INDIVIDUALS AND ORGANIZATIONS SUBJECT TO FULL REVIEW

The SEC shall perform the evaluations in accordance with the following steps for all individuals and organizations not exempt under 6A. This section applies to SwRI employees, as well as consultants and subcontractors. Documentation requirements are summarized in Table 1.

- 6.3 A manager will identify a required area of expertise and a prospective individual or organization to provide the expertise. This typically will occur when developing or modifying the staffing section of the CNWRA Management Plan, Operations Plans, a proposal, or other planning document. It also may occur as a result of a special request from a client or response to a reallocation meeting.
- 6.4 The manager shall prepare and submit to the SEC an evaluation portfolio containing the following information. Items a–d are primarily information for COI review; items e–g address other business considerations evaluated by the SEC (see Section 4.1); item f may also support any waiver request under Section 6C.
- a. Resumes and complete detailed work history of the prospective individual or organization. The work history must include clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance. Revenue by client as a proportion of total revenue or income of the individual or organization must be provided for the current and preceding three years, and planned future clients and revenue for the next two years.
  - b. A signed letter from the individual or organization attesting to (i) being currently free from COI, and (ii) intending to remain free from COI and committing to notify the CNWRA and obtain approval before agreeing to undertake other work that may create a potential for COI.
  - c. A completed COI Questionnaire for Preliminary Evaluation of Potential Conflict of Interest, Form AP-001-01 (Attachment 1) or, for clients other than the NRC, answers to other COI-related questions appropriate to the proposed scope of work.
  - d. A brief description of proposed scope of work. In cases where the scope of work is uncertain, the description should reasonably bound the range of anticipated assignments. Because COI can be site, facility, or project specific, the scope should identify these factors, as applicable.

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- e. A brief statement regarding the role of the work in the context of the overall program or contract.
- f. An assessment of programmatic impact of not using the prospective individual or organization as proposed, including indication of available alternative individuals or organizations.
- g. Other information required by AP-005, Obtaining Subcontract Services, or AP-006, Obtaining Consultant Services, as applicable.

6.5 The SEC shall evaluate any potential for COI using the information provided in the evaluation portfolio and the criteria provided in Section 5. This evaluation may be facilitated by using the flow chart in Figure 1. The President of the CNWRA may delegate evaluation of potential for COI and preparation of a recommendation to a committee member for final action by the committee as a whole.

6.6 The SEC shall prepare a brief report of its finding and basis for same.

- a. If no potential for COI is found, the report will be transmitted to the manager for action.
- b. If the SEC determines that there is a potential for COI, one of the following actions shall be taken.
  - Exclude the individual or organization from projects funded by the client. This approach is generally appropriate in cases where the SEC is convinced there is a COI (i.e., the potential for COI is unlikely to be ruled out by the client), application for a waiver is inappropriate, alternative sources of services are available, and similar situations.

In such cases, the SEC report will document the clients and projects, if any, on which the individual or organization can work.

- Request a formal review of COI by the client.

In such cases, the SEC report, evaluation portfolio, and other supporting information will be transmitted to the client by the President of the CNWRA. Supporting information should include, as appropriate, (i) specific factors that mitigate against a COI developing; (ii) specific aspects of the scope of work that eliminate the need for the individual or organization to review his/her/its own work; (iii) information explaining why the work the individual or organization would perform for the client is not the same as or similar to work previously, concurrently, or planned to be conducted for other clients; and (iv) information explaining why the work the individual or organization would perform for the client is not likely to be used in a manner that would give rise

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to a COI (e.g., why work for the NRC would not be used in a license application for a repository or interim storage facility).

- Request a waiver by the client. This approach is generally appropriate in cases where the SEC is convinced there is a COI (i.e., the potential for COI is unlikely to be ruled out by the client), application for a waiver is appropriate, alternative sources of services are not available, the candidate individual or organization offers unique skills that are not otherwise available, and similar situations.

In such cases, the SEC report, evaluation portfolio, and other supporting information will be transmitted to the client by the President of the CNWRA. Supporting information should include the items delineated in Section 6C of this procedure, as appropriate.

C. MITIGATION AND WAIVER

In unusual cases, it will be desirable to engage the services of an eminently qualified individual or organization with a potential for COI. The following steps shall be followed when such situations arise.

- 6.7 The SEC shall make a determination based on the evaluations delineated in Section 6B of this procedure concerning whether the benefit outweighs the negative effect of the COI. If so, the SEC shall propose administrative controls to mitigate the effect of such COI and will petition the client for a waiver from the requirements of this procedure. The NRC or other client has sole discretion in granting such waivers on a case-by-case basis. The results of such determination shall be documented.
- 6.8 Proposed means to mitigate a potential for COI may incorporate an appropriate combination of factors that include, but are not limited to (i) independent review and approval by the NRC or other client of the work that creates the potential COI, (ii) incorporation of the work that creates the potential for COI in a consensus standard, and (iii) acceptance of the work that creates the potential for COI by the technical community, as may be demonstrated by its publication, favorable review, and implementation in scientific or engineering practice. The selection, implementation, and evaluation concerning the effectiveness of any mitigating factors to be applied in a given situation are NRC or other client decisions. The results of such determination shall be documented.
- 6.9 For the special case of candidates participating in peer reviews, advisory groups, or workshops, proposed means to mitigate a potential for COI may incorporate administrative controls that include, but are not limited to (i) requiring full disclosure and documentation describing relationships, if any, with individuals or organizations that may give rise to actual or potential for COI in the event of a contract/subcontract award,

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(ii) providing for a balance of differing technical perspectives in selection of peer review or workshop members, (iii) offsetting the potential for COI by selecting a preponderance of members who have no COI, (iv) segregating the individual's comments to facilitate subsequent identification and evaluation of individual bias, (v) requiring individual expression of dissenting opinions, (vi) proscribing the individual from reviewing and commenting on particular portions of the subject matter, and (vii) controlling the end use of the results of such peer review or workshop to preclude an unacceptable programmatic impact. The selection, implementation, and evaluation of the effectiveness of any mitigating factors to be applied in a given situation are NRC or other client decisions. The results of such determination shall be documented.

6.10 When submitting a waiver request to the NRC or other client, the CNWRA shall enclose a copy of the proposed statement of work for the candidate individual or organization in question. In addition, the waiver request shall include the resume of the candidate/individual or, in the case of an organization, its current scope of work.

Additionally, copies of titles of papers by the individual or organization will be provided to the NRC or other client. In the case of a waiver request for an organization, current and projected future work shall be identified along with the funding organization, and a listing of relevant papers/articles that have been published under the organization's name.

6.11 Waiver actions are taken at the sole discretion of the NRC or other client. In the case of NRC, such actions are taken consistent with the requirements of NRC Acquisition Regulation 2009.570-9. Such actions are strictly limited to those situations in which (i) the work to be performed under the contract is vital to the NRC program, (ii) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest, and (iii) contractual review and surveillance methods can be employed by the NRC to neutralize the conflict.

7. RECORDS

All items identified as documentation within this procedure shall be maintained in accordance with the requirements of Section 17 of the CNWRA Quality Assurance Manual and Table 1 of implementing procedure QAP-012.

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**Table 1. Summary of Documentation Requirements to Support Evaluation  
Under AP-001**

Document or Information	Individuals and Organizations not Subject to Full Review (Section 6A)	Individuals and Organizations Subject to Full Review (Section 6B)
Résumé (6.4.a, sufficient to establish technical qualifications)	✓	✓
Complete work history (6.4.a)		✓
Signed COI letter (6.4.b)		✓
Completed COI questionnaire (6.4.c)		✓
Description of proposed scope of work (6.4.d)	✓	✓
Statement of the role of work (6.4.e)		✓
Statement of programmatic impact (6.4.f)		✓
AP-005 or AP-006 information (6.4.g)	✓	✓
Manager assessment memorandum	✓	✓
SEC determination memorandum	✓	✓
Support of request for waiver (6C) (if applicable)		✓
Foreign National Determination (6A and 6.4)	✓	✓

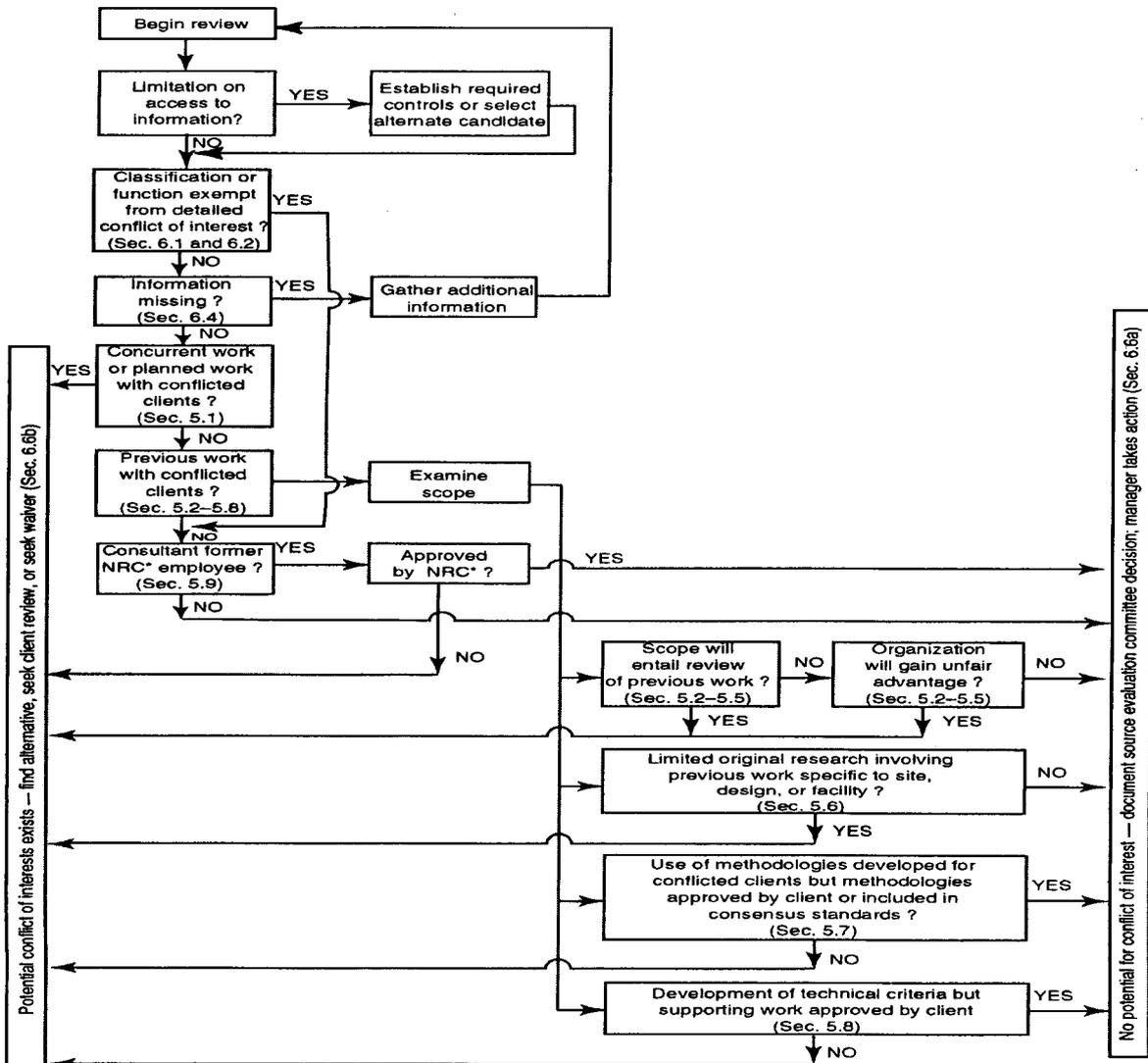
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\*NRC = U.S. Nuclear Regulatory Commission

Figure 1. Review Process for Determining Potential for Conflict of Interest

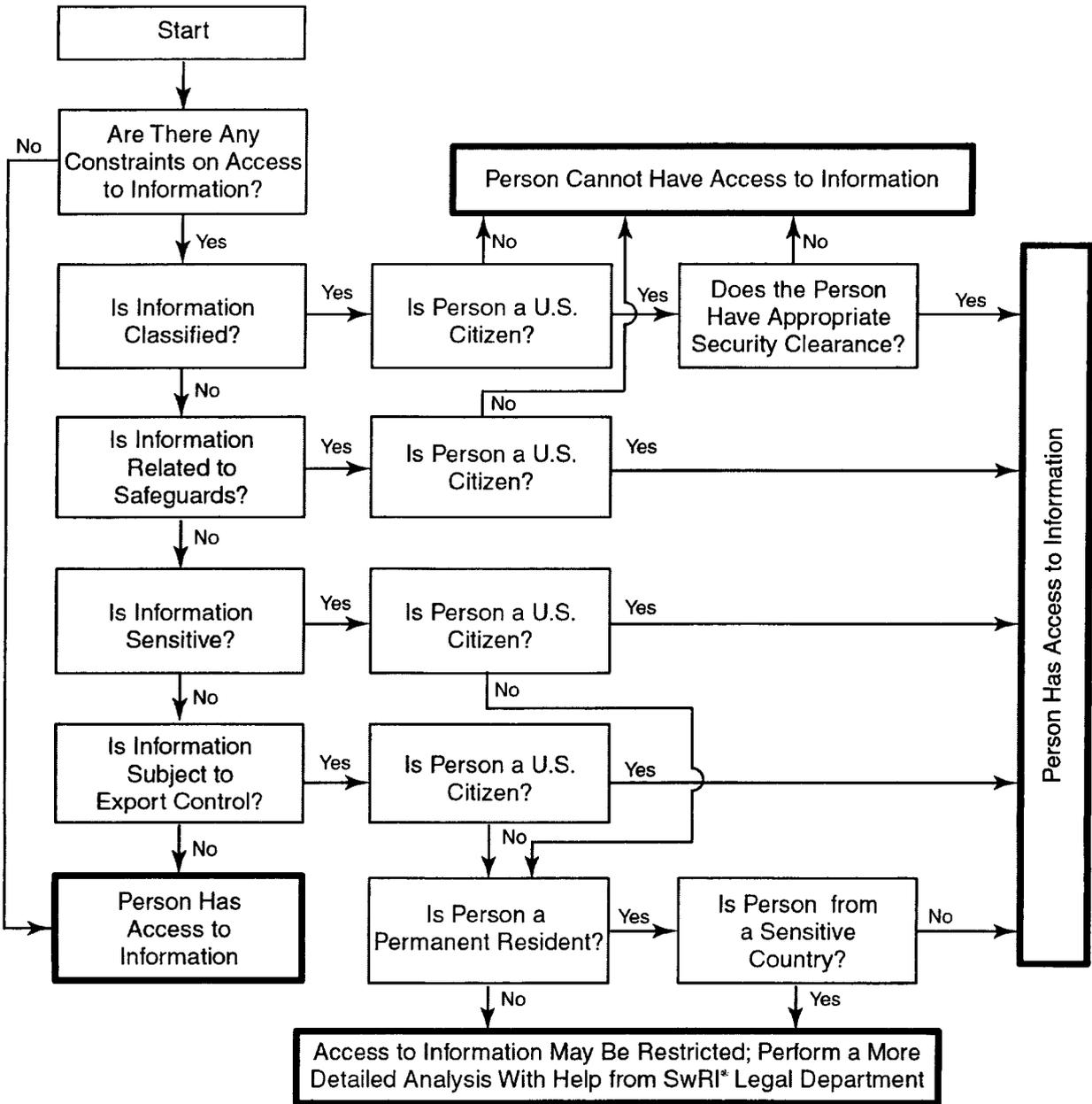
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**Figure 2. Evaluation of Access to Information by Staff, Consultants, and Subcontractor Persons**



ATTACHMENT 1

CENTER FOR NUCLEAR WASTE REGULATORY ANALYSES  
QUESTIONNAIRE FOR PRELIMINARY  
EVALUATION OF POTENTIAL FOR CONFLICT OF INTEREST  
(Appendix A Attached)

Name: \_\_\_\_\_ Social Security Number \_\_\_\_\_

A. GENERAL BACKGROUND RELATED TO DOE ACTIVITIES

1. Have you worked, are you working, or do you plan to work on activities directly or indirectly funded by the U.S. Department of Energy (DOE)? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing of papers which resulted from such activities, as appropriate (attach additional sheets, if necessary).

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2. Have you worked, are you working, or do you plan to work on activities directly or indirectly funded by the DOE that were related to the commercial nuclear fuel cycle? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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**SAMPLE**

B. BACKGROUND RELATED TO DOE HIGH-LEVEL WASTE (HLW) ACTIVITIES

3. Have you worked, are you working, or do you plan to work on activities directly or indirectly funded by the DOE that were related to the processing of defense or commercial high-level nuclear wastes into forms for subsequent disposal (such as borosilicate glass)? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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4. Have you participated in or managed, are you participating in or managing, or do you plan to participate in or manage activities directly or indirectly funded by the DOE that had the purpose of developing a technical consensus or technical criteria, or of establishing a uniform methodology related to evaluation of HLW disposal? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL FOR  
CONFLICT OF INTEREST (continued)

5. Have you participated in or managed, are you participating in or managing, or do you plan to participate or manage activities directly or indirectly funded by the DOE that had the purpose of formulating policy? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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6. Have you assumed a position of advocacy regarding issues, positions, or decisions of the DOE in matters related to the commercial nuclear fuel cycle, commercial HLW, or defense HLW? (Yes/No). **If yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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7. Provide a complete list of all of your publications that you have reason to believe could be used in supporting DOE application to construct a repository in the tuffaceous rocks at Yucca Mountain in the state of Nevada (attach additional sheets as necessary).

SAMPLE

C. BACKGROUND RELATED TO HLW ACTIVITIES OF OTHER AGENCIES

8. Identify any work of the types listed in items 1 through 7 above which you performed, are performing, or plan to perform for other parties to the Nuclear Waste Policy Act, including affected states, tribes, and other groups that may have acted as advocates of or interveners to the development of a HLW repository (Attach additional sheets as necessary).

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D. BACKGROUND RELATED TO OTHER NRC LICENSING ACTIVITIES

9. Identify any work which you performed, are performing, or plan to perform for a licensee for low-level waste disposal or contractor to such organization. Include work on low-level waste disposal facilities licensed directly by NRC or under Agreement State Provisions.

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QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL FOR  
CONFLICT OF INTEREST (continued)

10. Identify any work which you performed, are performing, or plan to perform for a NRC licensee or license applicant, or contractor to such organization, including, but not limited to, uranium recovery and site decommissioning management plan projects.

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11. Have you conducted, are you conducting, or do you plan to conduct any work directly or indirectly related to the topics listed below (other than work already described under items 1 through 10)?

- (i) Nuclear Waste Storage, Transportation, and Disposal? (Yes/No). If **yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (ii) Uranium Recovery [Uranium Mining] (Yes/No). If **yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

**SAMPLE**

- (iii) Three-Mile Island Fuel or Fuel Debris, Naval Fuel, Research Reactor Fuel, Foreign Reactor Fuel (Yes/No). If **yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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- (iv) Nuclear Site Decommissioning (Yes/No). If **yes**, describe your involvement, including a brief description of the scope of work, listing papers which resulted from such activities, as appropriate.

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QUESTIONNAIRE FOR PRELIMINARY EVALUATION OF POTENTIAL FOR  
CONFLICT OF INTEREST (continued)

12. Provide list of clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance. Provide revenue by client as a proportion of total revenue or income of the individual or organization for the current and preceding three years. **If none, state "NONE."**

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13. Provide list of planned future clients, sources of funding, scopes of work, and inclusive dates (month and year) of performance. Provide revenue by planned future clients as a proportion of total revenue or income of the individual or organization for the next two years. **If none, state "NONE."**

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To assist you in complying with this request, for each set of topics above, Appendix A lists associated organizations, locations, and laws, regulations, and rules. Please refer to these lists as necessary to help you identify activities that may be related to the areas of possible COI for CNWRA.

The information provided on this form is to the best of my knowledge true and accurate.

**SAMPLE**

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Signature

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Date

## Appendix A

### **Topics:**

Nuclear Waste Storage, Transportation, Disposal, Monitored Retrievable Storage, Central Interim Storage, and other related topics

### **Organizations and Locations:**

ABB Atom, Babcock and Wilcox, Battelle, Bechtel, Booz Allen, Brunswick, British Nuclear Fuels, Chew and Associates, Chem Nuclear, Dames & Moore, Duke Engineering, Envirocare, Fluor-Daniel, EG&G, Fort St. Vrain, Foster Wheeler Energy Applications, Framatome Cogema Fuels, General Atomics Technologies Corp., General Electric Company, General Nuclear Systems Inc., Golder Associates, H.B. Robinson, Holtech Corp., Kaiser-Hill, Lockheed-Martin Advanced Environmental Systems, Los Alamos Technical Associates, Louisiana Energy Services, Nuclear Assurance Corp., Nuclear Fuel Services Inc., Pacific Nuclear Fuel Services Inc., Pacific Sierra Nuclear Associates, Parsons, Private Fuel Storage Limited Liability Company, Rogers and Associates, Rust Environmental Federal Services, Scientific Applications International Corp., Scientific Ecology Group Inc., Siemens, Transnuclear Inc., TRW, Waste Isolation Pilot Plant, United States Enrichment Corp., Vectra Technologies Inc., Waste Management Inc., Westinghouse Safety Management Solutions, Woodward-Clyde Federal Services, Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Raytheon, Ebasco

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 51, 10 CFR Part 60, 10 CFR Part 63, 10 CFR Part 72, 10 CFR Part 76, 40 CFR Part 191, 40 CFR Part 194 and 40 CFR Part 197; Nuclear Waste Policy Act of 1982, as amended

### **Topics:**

Uranium Recovery [Uranium Mining], and other related topics

### **Organizations and Locations:**

Kennecott Uranium Company; Quivira Mining Company; Atlantic Richfield Company; UNC Mining and Milling; Hydro Resources, Inc.; Sohio Western Mining Company; Homestake Mining Company; Crow Butte Resources, Inc.; Rio Algom Mining Corporation; Atlas Corporation; Plateau Resources Limited; Bear Creek Uranium; UMETCO Minerals Corporation; American Nuclear Corporation; U.S. Energy Corporation; Energy Fuels Nuclear, Inc.; Power Resources, Inc.; Exxon Corporation; Cogema Mining, Inc.; Pathfinder Mines Corporation; Petrotomics Company; Western Nuclear, Inc.

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 40, 10 CFR Part 41, 10 CFR Part 20, and 40 CFR Part 192; Uranium Mill Tailings Radiation and Control Act (UMTRCA)

### **Topics:**

Three-Mile Island Fuel or Fuel Debris; Naval Fuel, Research Reactor Fuel; Foreign Reactor Fuel, and other related topics

## Appendix A (continued)

### **Organizations and Locations:**

Babcock and Wilcox; EG&G, General Electric Company; Holtech Corp.; Idaho National Engineering and Environmental Laboratory; Lawrence Livermore National Laboratory; Lockheed-Martin Advanced Environmental Systems; Los Alamos National Laboratory; Woodward-Clyde Consultants; Woodward-Clyde Federal Services; Agbabian Associates; Allied Chemical Corporation; Scientific Applications International Corp.; Sandia National Laboratories; Vectra Technologies, Inc.; Nuclear Packaging, Inc., WINCO, Rogers and Associates

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 72, and 10 CFR Part 100; National Environmental Policy Act of 1969 (NEPA)

### **Topics:**

Nuclear Site Decommissioning, and other related topics

### **Organizations and Locations:**

AAR Manufacturing; Advanced Medical Systems; American Ecology, Inc.; Babcock and Wilcox; B.R. Chemicals of America, Inc.; Cabot Corporation; Chemetron Corporation; Clevite Corporation; Dow Chemical Company; Earth Sciences Consultants, Inc.; Elkem Metals Company; Envirocare of Utah; Fansteel, Inc.; Fort St. Vrain; General Atomics Technologies Corporation; Heritage Minerals, ICF Kaiser Engineers, Inc.; Kaiser-Hill, Jefferson Proving Ground; Kaiser Aluminum Specialty Products; Kerr-McGee; Lake City Army Ammunition Plant; Minnesota Mining and Manufacturing Company; Molycorp, Inc.; Pacific Northwest National Laboratory; Permagrain Products, Inc.; Pesse Company; METCOA; RMI Titanium Company; Sandia National Laboratories; SCA Services, Inc.; Schott Glass Tech., Inc.; Science Applications International Corporation; Scientific Ecology Group, Inc.; Sequoyah Fuels Corporation; Shieldalloy Metallurgical Corporation; Tenera, Texas Instruments, Incorporated; TRW; U.S. Ecology; West Valley Demonstration Project; Westinghouse Electric Corporation; Whittaker Corporation, Westinghouse Safety Management Solutions

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 30, 10 CFR Part 40, 10 CFR Part 50, 10 CFR Part 51, 10 CFR Part 70, and 10 CFR Part 72, 40 CFR Part 141; National Environmental Policy Act of 1969 (NEPA); Radiological Criteria for License Termination (final rule); Interim National Drinking Water Regulations; West Valley Demonstration Act

### **Topics:**

DOE Civilian and Defense Programs Related to Reprocessing of Nuclear Materials, and other related topics

### **Organizations and Locations:**

Savannah River Laboratory, Hanford Reservation, Idaho National Engineering and Environmental Laboratory, Lawrence Livermore National Laboratory, Los Alamos National Laboratory, Oak Ridge National Laboratory, Pacific Northwest National Laboratory, West Valley Demonstration Project, Dames & Moore, Westinghouse Savannah River Company, Science Applications International Corporation, Flour-Daniel, British Nuclear Fuels

### **Associated Laws, Regulations, or Rules:**

Code of Federal Regulations: 10 CFR Part 20, 10 CFR Part 60, 10 CFR Part 61, and 10 CFR Part 70