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MEMORANDUM FOR: Michael J. Bell
Chief, High-Level Waste Licensing Branch

FROM: William J. Olmstead
Director and Chief Counsel
Regulations Division
Office of the Executive Legal Director

SUBJECT: BWIP ENVIRONMENTAL ASSESSMENT

In response to your March 18, 1983 memorandum, this will confirm our comments with respect to the draft environmental assessment for the basalt waste isolation project.

The requirement that DOE prepare such an assessment appears at section 112(b)(1) of the Nuclear Waste Policy Act. Under that provision, the environmental assessment for a nominated site is to be made available to the public and, in addition, DOE is required to notify State and tribal officials of the basis for any site nomination. DOE must also hold public hearings at which the recommendation of area residents with respect to issues to be addressed in the environmental assessment would be solicited and received.

These procedures make no mention of NRC. On the contrary, it appears that the first occasion for site-specific Commission participation was intended to be at the next stage of the process -- namely, after Presidential approval of a candidate site for site characterization. The nomination process may, of course, impinge upon the interests of NRC. These interests are addressed however, by the requirements that the siting guidelines be subject to the concurrence of the Commission.

Under 10 CFR § 60.11, NRC would have had an opportunity to review DOE's alternative sites and decision process as part of NRC's analysis of a site characterization report. While most of the information that was called for by § 60.11 must still be submitted for Commission review (under § 113(b)(1) of the Act), these items were deliberately excluded from the contents of the required site characterization plan. The implication of this omission is that the site-identification factors were to be addressed through the political processes defined by the Act and that this was not to be part of NRC's responsibility.

In light of the foregoing considerations, NRC is not required to use its resources to comment or review the BWIP draft environmental assessment.

XA

XA Copy Has Been Sent to PDR

WM Record File	101.5	WM Project	WN-11
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Although NRC is not required to comment, it can do so if its statutorily mandated obligations can be furthered in the process. However, NRC comments, if made, should directly relate to such obligations.



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