



NUCLEAR WASTE PROJECT OFFICE

OFFICE OF THE GOVERNOR

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October 10, 1985

Mr. William R. Dircks
Executive Director for Operations
Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

WM Record File

112

WM Project 1

Docket No. _____

PDR

LPDR _____

Distribution: _____

(Return to WM, 623-SS)

Dear Mr. Dircks:

Now that the Commission has adopted a project decision schedule for, "timely guidance from the Commission [to the staff] on its level of involvement in the Nuclear Regulatory Commission's (NRC) high-level waste repository program," SECY 85-40, it is appropriate that the Nuclear Regulatory Commission describe the process which will occur in connection with each of the Commission or staff actions outlined in the schedule. This letter contains a proposed process for each action which we hope would minimize the number of formal Commission meetings, give the states/tribes the participation they desire and afford the Department of Energy (DOE) equal time.

The paragraph numbers below coincide with the paragraph numbers in the NRC's project decision schedule.

1. NRC review and comment on DOE's draft Environmental Assessments is already in progress. The Commission will not engage in any affirmative action. We make no proposal in this area.
2. NRC is required by Section 121 (b)(2) to revise Part 60 to conform to Environmental Protection Agency (EPA) high-level waste standards. SECY 85-40 provides that the staff will perform a normal notice and comment rulemaking and that the Commission will approve both the proposed and the final rule. We propose that the states' normal involvement in NRC rulemaking through submission of comments be supplemented by a public meeting in which the states and other parties may brief

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the Commission on the adequacy of the proposed rule to conform to the EPA standard.

3. Section 113 (b)(1) requires that the DOE submit each site characterization plan to the Commission and to the states/tribes for comment. The NRC project decision schedule (SECY 85-40) clarifies that the Commission will approve each site characterization plan within 20 days after the NRC staff proposes Commission action. The total time for NRC comment is proposed for 5 to 10 months. We are concerned that the Department of Energy, and perhaps the NRC staff, seem to anticipate that site characterization could begin before the entire site characterization plan had been submitted to the Commission and to the states/tribes for comment. The NRC's project decision schedule suggests otherwise when it uses the term Commission "approval." The statute clearly indicates that the plan must be submitted for comment, "before proceeding to sink shafts at any candidate site." Consequently, we propose that a state/tribe to which a particular site characterization plan refers should receive DOE's complete site characterization plan and submit written comments to DOE and to the NRC. NRC staff should thereafter recommend proposed action to the Commission based on state/tribe comments as well as their own. Within the 20 days permitted by the NRC decision schedule, a public meeting should be held at which the DOE and the affected state/tribe may brief the Commission on the appropriateness of the NRC's approval of the site characterization plan.
4. The NRC project decision schedule refers to site characterization plan updates. The Commission would be informed of those updates and would consent by inaction during the 10 days thereafter. If the site characterization plan "updates" are in fact that, we see no need for a state/tribe comment process which duplicates that proposed for the original NRC approval of the site characterization plan. However, if the "update" is really a completion of those statutorily required elements which the DOE omitted to include in its original plan, then we propose the same procedure as the original NRC approval of site characterization plan (see paragraph 3).
5. Section 113 (c)(2)(A) requires that the NRC concur in the Secretary's proposal to use radioactive material on site characterization. This is an important determination, and we propose the same process used for the NRC's original approval of the site characterization plan (see paragraph 3). Inasmuch as the DOE's proposal to use radioactive materials should be in the site

characterization plan, the process of paragraphs 3 and 5 should be simultaneous.

6. Section 114 (a)(1)(D) requires DOE to prepare a final Environmental Impact Statement (EIS) on the site which it proposes to the President be submitted to NRC for licensing. Section 114 (f) allows the NRC, "to the extent practicable," to adopt the DOE's environmental statement as its own for purposes of its licensing proceeding. The NRC's review and comment on the draft EIS is, therefore, a significant NRC activity. Once again, we propose that the comments of the affected state/tribe be received by the DOE and NRC prior to the NRC staff's development of its own comments and that a public meeting be conducted within the 20 days in which the Commission must approve staff comments on the draft EIS, at which the affected state/tribe and the DOE brief the Commission on the adequacy of the draft EIS for its subsequent potential adoption by the NRC.
7. Section 114 (a)(1)(E) requires that the DOE's recommendation to the President that a particular site should be submitted for licensing and subsequent development must contain the comments of the NRC regarding whether the information developed through at depth site characterization analysis are "sufficient for inclusion in any application...for licensing of such site as a repository." Section 114 (a)(1)(F) also requires that the views and comments of the governor and legislature of the affected state be included in the same recommendation. The NRC's preliminary comments on the sufficiency of site characterization analysis is, in essence, a determination that the DOE has enough information to support a license application. This is an important preliminary determination and the state should have a significant involvement in that determination. The NRC decision schedule would have the Commission approve the staff's preliminary comments within 120 days of DOE's publication of the draft EIS. This suggests that the Commission review of the draft EIS and the preliminary comments on the sufficiency of site characterization could be done together (a single comment period, a single public meeting). Consequently, we propose to the Commission the same process described in paragraphs 3, 4, 5 and 6.
8. The states make no proposal to participate in the NRC's development of comments to Congress on a state's Notice of Disapproval, if one is filed.

9. No state involvement is needed in the preparation of the NRC's annual status report to Congress on the DOE application.
10. Section 114 (d) requires the Commission to act upon "an application for a construction authorization." The project decision schedule clarifies that the construction authorization would first be heard by a "licensing board." An appellate review licensing board may be established to review the licensing board decision. Thereafter, the Commission itself will authorize the staff to issue the construction authorization within 30 to 90 days, though that time period is not firm. Regarding the process for argument before the Commission regarding its review of the licensing board, we assume that the process used would be in the nature of an appeal of a licensing board decision as that process is currently used in the reactor licensing context and, therefore, make no supplementary proposal other than our often repeated proposal that the affected state be declared a necessary full party to the licensing proceeding and not a mere intervenor.
11. We assume the same process described in 10 would be used for the Commission's authorizing the staff to issue a license to receive and possess waste, or (12.) to amendments to the license for repository closure or license termination.
13. Section 114 (e) requires that DOE prepare a project decision schedule. The important issue to the Commission is whether DOE's schedule and its own schedule coordinate so as to meet statutory time frames. Though this is important to an affected state, we propose only that the states/tribes submit written comments on the coordination of the two project schedules before the NRC staff makes recommendations to the Commission.
- 14., 15., 16., 17., 18., 19., 20., 21., 22., 23., 24. All of these paragraphs deal with interim storage, monitored retrievable storage, and a test and evaluation facility. Therefore, we do not address these procedures, but leave them open for the suggestions of states in which such facilities may be developed.

What we have proposed is a single procedure which could be used on several occasions outside the formal licensing process. It is as follows: 1) NRC determines that the DOE submission is complete; 2) states/tribes submit written comments to NRC staff; 3) NRC staff makes recommendations to the Commission; and 4) within the allotted days, a public meeting is held at which DOE

and the affected state, or states and tribes, briefs the Commission on NRC's pending action. The procedure would be utilized 1) when the Commission approves the site characterization plan and concurs in the use of radioactive material; 2) when the Commission adopts rules pursuant to Section 121 (b)(2), 3) when the Commission approves staff comments to DOE's EIS, and 4) when the Commission approves the staff's preliminary comments on the sufficiency of site characterization analysis. With respect to coordination of project decision schedules, the process omits the third element. By consolidating issues, the procedure would be utilized on as few as 2 or 3 occasions. The first occasion could address approval of site characterization plans and concurrence in the use of radioactive materials in characterization. This occasion could also include the issue of NRC revisions to part 60 pursuant to Section 121 (b)(2) if that issue were ready by the time characterization plans require approval. (We advocate, of course, that such rules should be in place prior to NRC approval of characterization plans.) The second occasion could include the issues of NRC approval of staff comments on DOE's EIS and NRC's preliminary comments on the sufficiency of site characterization analysis. Revisions to part 60 pursuant to Section 121 (b)(2) could also be discussed on this second occasion if it had not been discussed in the earlier one. If not, a third occasion would be necessary to address that subject.

I appreciate the opportunity to present my views on this subject to you, and hope that you find the proposed process of interest. Should you have any questions, or wish to discuss this further, please do not hesitate to contact me.

Sincerely,



Robert R. Loux
Director

RRL/gjb

cc: Commissioner Nunzio Palladino, Chairman, Nuclear
Regulatory Commission
Commissioner James K. Asselstine, Nuclear Regulatory
Commission
Commissioner Frederick M. Bernthal, Nuclear Regulatory
Commission
Commissioner Thomas M. Roberts, Nuclear Regulatory
Commission
Commissioner Lando W. Zech, Jr., Nuclear Regulatory
Commission

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

WMRP: Due 11/7
12/13/85

EDO PRINCIPAL CORRESPONDENCE CONTROL

FROM: ROBERT R. LOUX
NUCLEAR WASTE PROJECT OFFICE
STATE OF NEVADA

DUE:

EDO CONTROL: 001133
DOC DT: 10/10/85
FINAL REPLY:

TO: DIRCKS

FOR SIGNATURE OF:

** GREEN **

SECY NO:

DESC:

ROUTING:

VIEWS ON PROJECT DECISION SCHEDULE FOR "TIMELY GUIDANCE FROM THE COMMISSION (TO THE STAFF) ON ITS LEVEL OF INVOLVEMENT IN NRC'S HIGH-LEVEL WASTE REPOSITORY PROGRAM" SECY-85-40

DIRCKS
ROE
REHM
STELLO
MINOGUE
KERR, SP
GCLINNINGHAM
DENTON

DATE: 10/28/85
ASSIGNED TO: NMSS

CONTACT: DAVIS

SPECIAL INSTRUCTIONS OR REMARKS:

FOR APPROPRIATE ACTION.
Rec'd 10/29/85 10:30

WM Action

Due to NMSS Director's office by 11/12/85.

~~11/26/85~~ WMRP m 10/31
12/13/85 REHM'S BOGUE/
NUCLEAR ACTION