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Mr. Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Rusche:

In response to your letter of January 15, 1985, I am pleased to provide the enclosed NRC staff comments (Enclosure 1) on the preliminary draft Project Decision Schedule. As you requested, we have focused our comments on the accuracy, clarity, and completeness of the information presented, and have addressed the expected duration of key program activities rather than the actual dates shown for their completion. I anticipate that the actual dates you will be proposing for NRC commitment will be provided in the Draft Project Decision Schedule, which I understand will be issued after the Mission Plan is finalized. With the exception of items noted in the enclosed comments, we believe this preliminary draft provides the appropriate level of detail and contains the necessary NRC milestones and lead times. We would like to note that assuming timely rulemaking to conform 10 CFR Part 60 to NWPA, the total time required under the NRC recommendations is essentially the same as that shown in the preliminary draft Project Decision Schedule.

Since the licensing process under 10 CFR Part 60 is central to the NRC schedules and time requirements, we believe all the key steps in this process should be identified in the Project Decision Schedule. Our comments on the licensing process principally are aimed at identifying and clarifying these key steps and times necessary to accomplish them. We previously have made similar comments on the Draft Mission Plan. We believe it is essential that the Mission Plan and the Project Decision Schedule reflect a clear understanding of this process.

The schedules presented in the preliminary draft assume a 10-month period for NRC's preparation of final Site Characterization Analyses, in accordance with the current procedural requirements of 10 CFR Part 60. Proposed amendments to these requirements were published by NRC on January 17, 1985 and are provided in Enclosure 2. We have estimated that these amendments would reduce the time period for preparation of SCA's to 5 months. However, the 10-month schedule should continue to be used for planning purposes until the schedular impact of the final version of these amendments has been assessed.

NRC's position on schedules is based on two important assumptions. First, we assume that adequate resources will be provided to the NRC to perform its functions on schedule. However, as NRC has recently informed its Congressional

OFC	WMPC	WMPC	WMPC	WMRP	FC	ELD	WM
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DATE	85/02/14	85/	85/	85/	85/	85/	85/

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oversight committees, OMB reductions have resulted in a shortfall in our high-level waste program resources for FY86, which may cause a delay in DOE's initiation of shaft construction and in situ site characterization activities as well as certain other delays. We will continue to assess the likely impact of budget restraints on our ability to meet schedules, and will keep you informed of these impacts.

Second, our estimates for times necessary for NRC to perform its activities presume that the ongoing interaction between our agencies is successful. This continuing action should result in timely issue identification and should permit DOE to file a high-quality license application with information sufficient to serve as a basis for licensing decisions. Our schedules do not provide for delays for rework or late accumulation of necessary information. We recognize that the Project Decision Schedule shows key activities. We believe its value would be enhanced if it noted that many subsidiary milestones with opportunities for DOE/NRC interaction are necessary to successfully meet these key milestones.

One of the matters requiring our attention is timely issue resolution. We addressed this previously in our July 31, 1984 comments on the Draft Mission Plan (Enclosure 3 of Mission Plan comments, p. 5). We are considering issue resolution through rulemaking in advance of the hearings required by 10 CFR Part 60. If such resolution is planned, it may be appropriate in future modifications to the Project Decision Schedule to include milestones for the resolution of identified issues. We will be discussing this approach to issue resolution with your staff.

Finally, I would like to note that our comments are based on the staff's estimate of the required duration of NRC activities, including time for Commission involvement as appropriate. We have begun discussions with the Commission to address the planned duration of NRC high-level waste actions, but have not yet obtained Commission endorsement of these estimates. Therefore, the comments on specific milestones are subject to change in our comments on the Draft Project Decision Schedule, which will be approved by the Commission and signed out by the Chairman.

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Thank you for giving us the opportunity to participate in this early stage of development of the Project Decision Schedule. Mr. Robert E. Browning, Director of the Division of Waste Management, is the principal NRC staff contact for discussion of these comments.

Sincerely,

(Signed) John G. Davis

John G. Davis, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:
1. NRC Comments on Draft
   Project Decision Schedule
2. Proposed 10 CFR 60
   Procedural Amendments

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NMSS	NMSS
DMAUSSHARDT	JDAVIS
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*See previous concurrence

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MAR 4 1985

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oversight committees, OMB reductions have resulted in a shortfall in our high-level waste program resources for FY86, which may cause a delay in DOE's initiation of shaft construction and in situ site characterization activities as well as certain other delays. We will continue to assess the likely impact of budget restraints on our ability to meet schedules, and will keep you informed of these impacts.

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   Project Decision Schedule
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ENCLOSURE 1

NRC Staff Comments
on
Preliminary Draft Project Decision Schedule
U.S. Department of Energy
Office of Civilian Radioactive Waste Management
January 1985

February 1985

I. Specific Milestones

1. Review of SCPs - It is not clear what is intended by the dates "7/86-8/87" for milestone I-11c in Table 5-11 (p. 80), Review and Comment on Site Characterization Plans, and how they relate to the dates shown on p. 12 for issuance of Site Characterization Plans. This item should be separated into individual milestones for each of the sites to be characterized for the first repository. As specified in Table 3 (p. 55), NRC's final SCA's for these sites would each be issued within ten months of the date of issuance of each SCP, under existing regulations. Note that under existing procedural requirements, NRC's comments on the SCP's will include either an opinion that there is no objection to DOE's site characterization program, or specific objections to DOE's proceeding with characterization (10 CFR §60.11(e)).

2. Review of SCPs - The reference schedules for milestones 3d, e, and f in Table 3 (p. 55) and Table 5-11 (p. 82) should each be moved one month earlier for consistency with the current 10 CFR Part 60. Milestone 9c in Table 2 (p. 49) correctly shows that NRC's review and comment would be complete ten months after DOE issues the SCP. Furthermore, the entries for milestones III-3a, c, d, and f in Table 5-11 are not clear. We recommend separate entries for the first and second repositories, or deletion of these milestones since they repeat information in milestones I-11c and II-9c.

3. Revision to Reg. Guide 4.17 - The preliminary draft states that a revision of Reg. Guide 4.17 on the format and content of site characterization plans will be issued in draft form in either December 1984 or January 1985 and in final form in March 1985 (pp. 25, 30, 37, and 80). As stated in letters dated December 19, 1983 and April 20, 1984 from H.J. Miller, NRC, to J.W. Bennett, DOE, this revision involves only minor changes which principally serve to conform the July 1982 final version of Reg. Guide 4.17 with the slightly modified scope and terminology called for in NWPA. Therefore, NRC believes that the existing guidance provides adequate direction for DOE in preparing SCPs. We recommend that in the second paragraph on p. 30, the fourth sentence be replaced by the following: "The revision involves minor changes, and the current Reg. Guide 4.17 provides sufficient guidance for DOE's present purposes. NRC plans to publish a draft revision of Reg. Guide 4.17 in March 1985, and issue its final revision after the final rulemaking is completed to amend 10 CFR Part 60 procedural requirements to conform with NWPA. This final rulemaking is now scheduled for November 1985."

4. Concurrence in Use of Radioactive Material - The preliminary draft proposes for NRC to concur in the use of radioactive material at candidate sites undergoing characterization by May 1987 for first repository sites and by June 1991 for second repository sites (pp. 39, 51 and 80). Under proposed procedural amendments to 10 CFR Part 60 (See enclosure 2), NRC's site characterization analysis would include a determination on the proposed use of radioactive material, if DOE's planned site characterization activities include onsite testing with such material (proposed 10 CFR §60.18(e)). NRC recommends separate listings for this milestone for each candidate repository site undergoing characterization, and that these schedules coincide with the proposed deadlines for completing site characterization analyses for each site.

5. Review of MRS Proposal - Milestone 34c of Table 1 (p. 46) proposes for NRC to review and comment on DOE's draft Monitored Retrievable Storage (MRS) proposal within a one month time period, prior to DOE's submittal of the proposal to Congress. We recommend that a period of 6-8 weeks be projected for the NRC review period to provide sufficient time for coordination of staff comments and review with the Commission prior to submittal to DOE.

   Furthermore, we note media reports of comments by DOE that submittal of the proposal may be delayed as further consideration is given to the role of MRS as part of an integrated waste management system. We suggest that the Project Decision Schedule should reflect this potential delay, perhaps in the discussion of MRS on page 18.

6. Revision of 10 CFR Part 60 - Table 5.11 proposes for NRC to revise its criteria in 1985 based on EPA's high-level waste standards (p. 80). This should be revised consistent with Table 1 (p. 45), where it is stated that NRC's revision will occur after EPA completes its final HLW standard.

7. In-Situ Testing in Salt - The schedule for in-situ testing which shows the start of exploratory shaft construction in March 1987 in salt leaves only a short period of testing to support the Draft EIS. The Draft Mission Plan stated that 30 months would be available for exploratory shaft construction and in-situ testing in salt: September 1986 to March 1989 (Vol. I, p. 3-A-39, and Vol. II, p. 2-20). The first 19 months was for shaft construction and the last 8 months was available for in-situ testing (Vol. II, p. 2-21). The Project Decision Schedule would narrow the total time for exploratory shaft construction and in-situ testing to 24 months: March 1987 to March 1989 (pp. 12, 37, and 40). Assuming the same 19 months for shaft construction as in the Draft Mission Plan, only 5 months would remain for in-situ testing with no time for breakout, drift mining,

and equipment installation. This would appear to be an insufficient time period to perform important in-situ tests in salt, such as heater testing to investigate the repository-induced thermomechanical loadings on the host rock and surrounding strata.

The in-situ testing schedules should be addressed in the Final Mission Plan, including a discussion of what DOE considers to be a sufficient time period for testing, before DOE requests commitments to the Project Decision Schedule.

8. DEIS Review - DOE proposes for NRC to submit comments on the Draft Environmental Impact Statements for the first and second repository site selections within 2 months of publication of each DEIS, and for NRC to submit its preliminary comments on the sufficiency of site characterization and the waste form proposal within 7 months of publication of each DEIS (pp. 40, 52, 80, and 81). The NRC staff does not believe 2 months will be adequate for the completion of the DEIS review. However, the staff currently intends to provide the preliminary sufficiency comments at the same time as its comments on the DEIS and believes both actions can be completed within four months of publication of the DEIS, provided there is a thorough review and consultation process throughout the site characterization phase.

9. Guidance on LA Content - The preliminary draft proposes for NRC to update 10 CFR §60.21 on the content of license applications by October 1986, along with a Reg. Guide that is similar to Reg. Guide 1.70 Revision 3, "Standard Format and Content of Safety Analysis Reports for Nuclear Power Plants" (milestone III-12a, pp. 61 and 82). NRC is currently considering whether revisions to 10 CFR §60.21 are necessary. The Reg. Guide planned will primarily provide guidance on the format for a license application, as the content will be established through the prelicensing consultation process. NRC will take action on development of this Reg Guide in FY87.

10. FEIS Adoption - The preliminary draft proposes for NRC to adopt DOE's final environmental impact statements for the first and second repository site selections by September 1990 and July 1997, respectively (pp. 42, 54, 80, and 81). These dates are both only one month after DOE's scheduled submittal of license applications to NRC. NRC is currently developing proposed amendments to 10 CFR Part 51 which will establish the procedures for carrying out the Commission's NEPA responsibilities, including adoption of the DOE EIS and the timing of this action within the license review period. We recommend deletion of this milestone from the Project Decision Schedule until such requirements are promulgated. If DOE feels the EIS adoption should still be included in the Project Decision

Schedule, we suggest modifying milestones I-24b (pp. 42 and 80) and II-23b (pp. 54 and 81) so that the action required reads "review license application, including adoption of EIS to extent practicable."

DOE should recognize that early interaction to discuss the intended scope and content of the EIS may be necessary to facilitate NRC's later adoption of the EIS. Such discussions should be completed well in advance of the planned issue date of the first DEIS.

11. Transportation - The transportation related activities diagrammed at the bottom of Figure 1 (p. 4) should be explained in the text accompanying Figure 1. In particular, the meaning of "performance specifications for transportable casks" and "NRC issue design criteria" should be clarified. Furthermore, Figure 1 contains transportation actions and decisions which do not appear in the transportation program milestones (Table 3, p. 61), and therefore have no reference schedule. A schedule for these items should be provided. Finally, the dates for milestone III-13e, "NRC review Safety Analysis Report Package," do not agree between Table 3 (p. 61) and Table 5.11 (p. 83).

12. Transportation Procedural Agreement - The task title for milestone III-13a on page 82 should be modified to clarify that this procedural agreement deals with the certification process for transportation casks, as stated on p. 61. The date of this agreement was 11/3/83, not 11/3/84 as suggested on p. 82.

13. Tyographical Error - Under milestones III-5e and 5f on p. 82, the word "process" should be replaced by the word "possess."

II. Licensing Process

1. Six major licensing activities need to be depicted in any description of the NRC repository licensing process: 1) DOE submits license application; 2) NRC performs licensing review; 3) NRC authorizes repository construction; 4) DOE submits updated license application; 5) NRC licensing review; and 6) NRC grants license to possess HLW. In several locations the preliminary draft inaccurately describes this process and must be revised to accurately describe these steps: pp. 4, 9, 16, 19, 21, and 27. Figures 2 and 5 (pp. 9 and 19) should be revised to show that the "NRC License Review" continues on parallel track with "Construction and Testing" until the beginning of repository operations. Further clarification of NRC's licensing process can be found in our July 31, 1984 comments on the Draft Mission Plan (Enclosure 2 of Mission Plan comments, p. 11).

2. Figures 4 and 7 (pp. 17 and 23) indicate that DOE will "submit LA to NRC" in 6/95 for the first repository and in 3/2003 for the second repository. These milestones should be revised in accordance with 10 CFR §60.24 to read "submit updated application to NRC."

3. With the change recommended in comment 2, Figures 4 and 7 (pp. 17 and 23) indicate that DOE intends to update its license application to NRC approximately half-way through the Phase 1 construction period for the first repository and approximately half-way through the full facility construction period for the second repository. NRC notes that although such timing is not inconsistent with current licensing requirements, 10 CFR §60.41 requires NRC to reach a finding that construction has been "substantially completed in conformity with the application as amended" in order for a license to be issued to DOE. Such a stage will have to be reached by the time the hearing process for the repository license begins. Furthermore, DOE's update of the license application must demonstrate that the facility has been constructed according to the design provided in the initial license application (10 CFR §60.24(b)(2)). Due to these requirements, an update to the license application will be necessary when construction of the facility is substantially complete. Before requesting a commitment to the milestones in the Project Decision Schedule, DOE should clarify in the Final Mission Plan what construction activities will precede license application update(s) and what construction will remain to be completed after the update(s) is/are filed.

4. NRC recommends adding two sentences to the footnote on p. 15: "The term "Construction Authorization Application" is used throughout the Project Decision Schedule and should be considered synonymous with "License

Application" as defined in 10 CFR §60.21. This application will be reviewed under 10 CFR Parts 2 and 60."

Similarly, a sixth sentence should be added to the footnote on p. 55 regarding the proposed procedural amendments to 10 CFR Part 60: "The dates shown throughout the Project Decision Schedule for NRC's preparation of SCAs are based on the current procedural rule."

5. The preliminary draft lists Federal activities required under NWPA in Tables 1 and 2, and other Federal technical activities in Table 3. Since the licensing of geologic repositories is required under Section 121(b) of NWPA, it would be useful to transfer milestones 5 and 6 of Table 3 (pp. 56-57) to Tables 1 and 2, where construction authorization milestones are also listed.

6. Figure 4 indicates that DOE will "submit LA amendment to NRC" in 6/98 for Phase 2 of the first repository. This milestone should be revised to read "submit application to amend license to NRC," since a license for Phase 1 would have already been granted at that time.

7. Proposed procedural amendments to 10 CFR Part 60 were published in the Federal Register on January 17, 1985 (Enclosure 2). NRC recommends that in the first complete paragraph on p. 28, the last four sentences be replaced with:

> NRC published proposed revisions to the procedural rules on January 17, 1985 to make the rules consistent with the Act. The proposed revisions have not been reflected in the reference schedule. It is assumed, however, that any changes made by NRC will not have significant adverse schedule impacts.

Furthermore, we suggest substituting the following statement for the first two sentences in the second complete paragraph on p. 28:

> In addition to the procedural requirements of 10 CFR Part 60, the licensing of a geologic repository is subject to NRC regulations in 10 CFR Part 2, "Rules of Practice for Domestic Licensing Proceedings." These regulations establish the procedures for the conduct of the licensing review by the Commission, including adjudicatory hearings before the Atomic Safety and Licensing Board.

III. Other Comments

1. The preliminary draft should be revised in several locations to reflect the agreement between the Commission and the Director of DOE's Office of Civilian Radioactive Waste Management on June 22, 1984 that the preliminary determination of site suitability required under Section 114(f) of NWPA will be made after site characterization has been completed. Revisions are required on pp. 4, 36, and 52, and a milestone for this action should be added on pp. 12 and 26. Also, it should not be indicated that Site Characterization Plans will be issued after this preliminary determination is made (p. 37).

2. We reiterate comments provided to DOE on the Draft Mission Plan (July 31, 1984, Enclosure 3, Comment # 1), regarding the need for additional information on the two-stage construction plan for the first repository. The Final Mission Plan should include such information as the basis for the Project Decision Schedule.

3. Like the Draft Mission Plan, the preliminary Draft Project Decision Schedule divides the repository program into five major phases (p. 8). The same terminology is used to distinguish between the initial 400 metric ton per year capacity facility (Phase 1) and the full-scale 3000 metric ton per year capacity facility (Phase 2) planned by DOE for the first repository. It would be helpful to use different terminology for these two purposes (such as by calling the two first repository facilities "Stage 1" and "Stage 2").

   Moreover, the references to Phase 3 and Phase 4 on pp. 15 and 16 should be changed to Phase 4 and Phase 5, respectively.

4. The preliminary draft provides a brief outline of the major activities planned during Phase 2, the site characterization phase (p. 11, second and third paragraphs). The discussion should be expanded to state that: 1) development of repository designs will also occur during this phase; and 2) laboratory testing of site samples will occur during this phase, as well as laboratory testing to evaluate the performance of materials planned for use as engineered barriers.

5. The preliminary draft describes the procedures for interaction and preliminary consultation between DOE and NRC through the site characterization period, and the procedural agreement between DOE and NRC that outlines such activities (p. 30, paragraph 2). We recommend adding the following passage at the end of that paragraph:

Prior to SCP submission, DOE will be making decisions on long lead-time items related to exploratory shaft construction and sealing, in-situ testing, hydrogeologic testing and other site investigations. As described in the procedural agreement, DOE will meet with NRC to describe its plans for developing the information necessary for satisfying NRC licensing requirements, and to obtain NRC's views on the sufficiency of these plans. This interaction should allow timely NRC guidance before decisions on long lead-time items are made and major resources are committed in order to avoid errors which could result in delays in the licensing phase.

6. The preliminary draft states that DOE must comply with both NRC's technical criteria and EPA's standards for high-level waste repositories (p. 24, third paragraph). It would be more accurate to state that DOE is required to comply with NRC's criteria alone (and DOE would thereby meet EPA's high-level waste standards as they are implemented by NRC).

7. The procedures for updating the Project Decision Schedule, described on pp. 6 and 7, appear to be acceptable with one exception. In case of the second type of update, described at the end of p. 7, the discussion does not indicate whether or not other agencies would be given an opportunity to assess their ability to comply with updates initiated by DOE. Such provisions should be added to the discussion on p. 7.

8. Figure 1 (p. 4) should be revised to reflect the possibility that NRC could deny the construction authorization or the license to receive and possess waste.

9. On p. 29, the second sentence of the first paragraph should be revised to read, "Amendments for specific technical criteria related to HLW disposal in the unsaturated zone were proposed in February 1984 and final amendments are expected to be published in the spring of 1985."

10. It would be useful to explain the relationship between the Project Decision Schedule and DOE's Transportation Business Plan listed on p. 61 (milestone 13b). Also, Figure 1 (p. 4) should indicate how the timeline for transportation activities is integrated with the repository development timeline.

11. The preliminary draft proposes for NRC to report to Congress and the President on "analysis of activities undertaken to support a TEF" (pp. 45 and 81). We assume this milestone refers to the requirements for such reports under Section 217(f)(3)(B), "as the Commission considers appropriate."

10 CFR Part 60

Disposal of High-Level Radioactive Waste in Geologic Repositories; Amendments to Licensing Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing revisions to procedures with respect to NRC reviews of license applications for disposal of high-level radioactive waste in geologic repositories. For the most part, the revisions reflect the provisions of the Nuclear Waste Policy Act of 1982, particularly as they relate to site characterization and the participation of States and Indian tribes in the process of siting, licensing, and development of disposal facilities.

DATES: Comment period expires March 18, 1985. Comments received after March 18, 1985 will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before that date.

ADDRESSES: Submit written comments and suggestions to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Division of Radiation Programs and Earth Sciences, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 427-4586.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (Commission or NRC) in 1981 promulgated procedures for licensing Department of Energy (DOE) facilities for disposal of high-level radioactive wastes in geologic repositories (46 FR 13971, February 25, 1981). More recently, Congress has established a definite Federal policy for such disposal, Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 42 U.S.C. 10101 (Waste Policy Act). Section 121 of the Waste Policy Act directs the Commission, not later than January 1, 1984, to promulgate technical requirements and criteria that it will apply in approving or disapproving license applications with respect to geologic repositories. The Commission has complied with this requirement by publishing final technical criteria (48 FR 28914, June 27, 1983). The Commission is now turning to

a review of its previously adopted procedures. One objective is to reflect the provisions of the Waste Policy Act. In addition, however, the Commission is taking this opportunity to clarify its procedures in the light of experience gained over the past three years in consultations on the SCA reviews of DOE siting projects and in light of the extensive prelicensing interaction process now underway between NRC, the states, and DOE.

The principal aspects of the licensing procedures that the Commission has under review concern (1) the role of NRC during site screening and site characterization activities, (2) State, tribal, and public participation in NRC activities with respect to geologic repositories, (3) NRC responsibilities under the National Environmental Policy Act (NEPA), (4) procedures and standards for identifying categories of material as high-level radioactive wastes, and (5) changes, especially with respect to content of the license application, needed to conform the licensing procedures to the technical criteria.[1] The present rulemaking proposal deals with the first two of these topics; because the two are so intertwined they will be treated together.

Background

In 1974, when the Atomic Energy Commission's functions were divided between the Energy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission, Congress provided generally that ERDA high-level waste disposal facilities were to the subject to NRC's regulatory and licensing authority (42 U.S.C. 5842). NRC's role with respect to such facilities remained unchanged when the functions of ERDA were transferred in 1977 to the new Department of Energy (DOE) (42 U.S.C. 7151).

Although the Atomic Energy Act recognizes the interest of the States in the peaceful uses of atomic energy and the need for cooperation with the States with respect to the control of radiation hazards, the Federal government was authorized to regulate the disposal of high-level radioactive waste to protect public health and safety (42 U.S.C. 2021(c), 10 CFR 150.15). Nevertheless, the Act recognizes the need for cooperation with the States, 42 U.S.C. 2021(a), and it is Commission practice to consult with State and local governments on matters of common interest.[2]

Recognizing that further legislative guidance would help to define appropriate forms of consultation and cooperation, Congress in 1978 directed the Commission to prepare a report on means for improving the opportunities for State participation in the process for siting, licensing, and developing nuclear waste storage or disposal facilities. NRC Authorization Act for Fiscal Year 1979, Pub. L. 95-601, Sec. 14(b). After consultation with the States, the Commission submitted its report to Congress in 1979. *Means for Improving State Participation in the Siting, Licensing and Development of Federal Nuclear Waste Facilities*, NUREG-0539, reprinted in *Nuclear Waste Isolation Pilot Plant (WIPP): Oversight Hearings Before the Subcommittee on Oversight and Investigations of the House Comm. on Interior and Insular Affairs*, 96th Cong., 1st Sess. 514-601 (1979) (the NRC Report). The NRC Report, "Based on the premise that State involvement in any national nuclear waste management program is a critical element in making the program work," included several procedural and substantive recommendations.

The value of such State involvement—for the Commission as well as for the States—was emphasized as the NRC developed a framework for licensing geologic repositories for high-level radioactive waste (10 CFR Part 60). The first step in this process was the Commission's publication of a Proposed General Statement of Policy (43 FR 53869, November 17, 1978). This document contemplated that the Commission would make licensing determinations before DOE commenced construction of a repository shaft. DOE would be encouraged, however, to consult informally in advance with NRC staff. At this early stage, NRC would point out aspects of a location selected by DOE which might require special attention or present special problems and NRC would help to define the kinds of information needed for licensing decisions. As noted, repository construction (including sinking of the main repository shaft) would require licensing action. Site characterization would continue during repository construction, with the data to be reviewed before issuance of a license authorizing receipt of radioactive material. Upon commencement of NRC's informal review, NRC would publish a notice in the Federal Register, send copies of information submitted by DOE to State and local officials, and offer to meet with those officials to provide information and explore possibilities of their participation in the licensing process.

After soliciting and considering views, the Comission next proceeded to issue a proposed rule. One significant difference from the policy statement was that DOE would be permited to sink shafts and engage in site characterization activities at depth before formal licensing proceedings were commenced. DOE's site characterization plans would nevertheless be reviewed in considerable detail in advance, with opportunity for public comment on an NRC draft site characterization analysis. The proposed rule incorporated detailed provisions to ensure extensive opportunities for State and public participation. These procedures were "designed to allow affected States to participate to the fullest extent possible within the limits of the Commission's authority and the State's own desires and capabilities." The Commission observed, however, that "provisions for State participation would be reviewed in the light of any pertinent statutory changes that may be enacted." Moreover, it noted that the extent of State participation may be affected by legislative action on the matters discussed in the NRC Report (44 FR 70408, December 6, 1979.

The final rule added provisions with respect to notice to and participation by Indian tribes. However, inasmuch as public comments on the proposed rule pointed out no serious deficiencies in the opportunities for State and public participation, the provisions that had been proposed were adopted without material change (46 FR 13971, February 25, 1981).

Both the proposed rule and final rule contemplated that DOE would characterize several sites at depth.

[1] Issues pertaining to NEPA will require modifications to 10 CFR Part 51. Amendments to 10 CFR Part 51 to reflect the Waste Policy Act will be the subject of a subsequent rulemaking. However, actions which the Commission may take relative to environmental assessements required by the Waste Policy Act are discussed later in this statement. Consideration of the definition of HLW is reserved, and the Commission anticipates publication of an advance notice of proposed rulemaking on this topic in coming months. The content of application section will be reviewed after issuance of DOE siting guidelines under the Waste Policy Act to take such guidelines into account if and as appropriate. The Commission would welcome suggestions from interested persons with respect to other changes that may be needed to reflect provisions of the Waste Policy Act.

[2] 42 U.S.C. 2021 is a codification of a 1959 statute which added a new Section 274 to the Atomic Energy Act of 1954. Section 274 established procedures and criteria for discontinuance of Federal regulatory responsibilities with respect to byproduct, source, and special nuclear materials and the assumption thereof by the States. However, under Section 274, the regulation of high-level waste disposal for safety reasons remained a Federal responsibility. *See Pacific Gas & Electric Co. v. Energy Commission*, 461 U.S. 190, 75 L.Ed.2d 752, 774 (1983).

primarily so as to enable the Commission to discharge its NEPA responsibilities with respect to evaluation of alternatives. With this in mind, DOE would have been required, as discussed below, to include information concerning its site selection process in its site characterization report to NRC.

The Existing Regulations

The principal aspects of the existing licensing procedures that are of present interest relate to (1) submission of DOE's site characterization report, (2) public notice of receipt of the site characterization report, (3) the preparation of a site characterization analysis by NRC, (4) consultation between NRC and States and Indian tribes, (5) participation in NRC reviews, and (6) procedures for the formal hearing process. It will be useful to review the present language of 10 CFR Part 60 with respect to these items before turning to the changes that we propose to adopt.

1. Site Characterization Report (§ 60.11)

NRC requires that DOE submit a site characterization report "as early as possible after commencement of planning for a particular geologic repository operations area, and prior to site characterization." Both the timing and required content of this report reflect the statutory directive in section 14(a) of the NRC Authorization Act for 1980, Pub. L. 95-601, which provides:

> Sec. 14(a) Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high-level radioactive wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal.

The Commission, in proposing its licensing procedures, made specific reference to this statute and explained that its rule would "ensure that the notice from the Department will, in fact, initiate a meaningful, substantive review" (44 FR 70409). The site characterization report, together with the NRC staff assessment thereof and meetings between NRC staff and State officials and other interested persons, "assures an early opportunity for other Federal and State agencies and the public to become involved in the decision making process" with respect to DOE's site characterization and site selection programs. *Ibid.* The review process would provide NRC an opportunity to identify and consider a broad range of public concerns; this would assist NRC in the preparation of a comprehensive and reasoned analysis.

The site characterization report would include more than a description of the site and the program to be undertaken to characterize the ability of the site to achieve waste isolation. It would also discuss "the method by which the site was selected for site characterization . . . and . . . a description of the decision process by which the site was selected for characterization, including the means used to obtain public, Indian tribal and States views during selection." Alternative media and sites at which DOE intends to carry out site characterization would be identified. DOE's report on these topics would enable the Commission to consider whether additional information might be needed by the Commission in discharging its NEPA responsibilities (46 FR 13972).

2. Notice and Publication (§ 60.11)

As directed by section 14(a) of the 1980 NRC Authorization Act, NRC rules provide for notice to the Governor and the State legislature of the State of proposed situs whenever a site characterization report is received. Although not required to do so by law, NRC would also (1) transmit copies of the site characterization report to these addressees, (2) provide similar notice to local officials, tribal organizations, and Governors of contiguous States, and (3) publish in the Federal Register notice of receipt of the site characterization report which, among other things, will advise that governmental and Tribal officials may request consultation with NRC staff.

3. Site Characterization Analysis (§ 60.11)

The rules provide that NRC will review the site characterization report and prepare a draft site characterization analysis which discusses the information submitted by DOE, and that a request for public comment on the draft site characterization analysis is to be published in the Federal Register; copies are to be transmitted to the State and local officials and Tribal organizations who had previously received notice under the rule. It was anticipated that NRC would hold local public meetings in the immediate area of the site to be characterized, both to disseminate information and to obtain public input, but this is not an explicit requirement under the rule. After a comment period of at least 90 days, NRC would transmit a final site characterization analysis to DOE. As noted above, these procedures were designed to solicit comments that would assist NRC to prepare a comprehensive and reasoned analysis.

4. Consultation (§ 60.61, § 60.64(a))

Under Part 60, NRC staff would consult with State government and Tribal officials, on written request, to keep them informed of NRC views on the progress of site characterization and to notify them of NRC meetings and consultations with DOE. NRC would respond to written question or comments from these officials and transmit such responses to DOE. Consultation would not be limited to site characterization, but could include a review of NRC licensing procedures and the type and scope of State and Tribal activities in the license review permitted by law as well.

5. Proposals for State Participation (§§ 60.62-64)

The NRC Report (at 18-24, 27-28) distinguished between improvement of State participation in the NRC review process on the one hand and, on the other, the carrying out of an "independent State review" of a proposal to store or dispose of nuclear waste. The Report identified several avenues for State participation in NRC reviews that could be implemented under existing law. These included support from NRC in the form of educational or information services, exchange of personnel under the Intergovernmental Personnel Act, and contracts for technical services needed by the Commission. Besides the activities that could be carried out under existing law, the Report (at 28) recommended that the Congress "establish a grant program to allow the States to participate more fully in the Federal waste management program."

Part 60 provides for State participation in the review of a site characterization report and/or license application. A proposal initiated by the State would describe how the State wishes to participate in the review and how it plans to facilitate local government and citizen participation, and it would include funding estimates of work to be done under contract with the NRC. Subject to the availability of funds and legal constraints, NRC would approve State proposals that it finds will enhance communications with the State and contribute productively to NRC's license review.

Under the State participation provisions, proposals can be submitted by any State "potentially affected" by

the siting of a repository, even if the prospective repository site is in a different State. By the same token, Indian tribes "potentially affected" by the siting of a repository may submit proposals for participation in the same manner as the States.

6. Formal Licensing Procedures

The NRC rules provide that notice of specified events (docketing, hearing, proposed issuance of license, issuance of license) will be published in the Federal Register; there are additional specific requirements for notice to State and local officials (and to Tribal organizations if a repository is to be located within an Indian reservation). 10 CFR 2.101–2.106. Affected States and Indian tribes desiring to participate as a party to a licensing proceeding may petition for leave to intervene; and they may also participate in a more limited capacity as provided by the regulation. 10 CFR 2.714, 2.715.

The Needed Revisions

One of the purposes of the Waste Policy Act is to define the relationship between the Federal government and the State governments, and between the respective Federal agencies, with respect to the disposal of high-level radioactive waste. The Act prescribes in great detail procedures for DOE to consult and cooperate with the States (and affected Indian tribes) with respect to determining the suitability of an area for a repository and with respect to other issues arising in connection with the planning, siting, development, construction, operation, or closure of such a facility (Sec. 117, 42 U.S.C. 10137). DOE is directed to make initial grants to States with potentially acceptable sites for a repository and, subsequently, to provide further grants to any State in which there is a site approved for characterization (Sec. 116(c), 42 U.S.C. 10136). The latter grants are to enable the States, among other things, to review potential impacts of the repository upon the State and its residents and to provide information to such residents regarding the activities of DOE or the Commission with respect to the site. DOE is also directed to provide financial and technical assistance to a State in which a repository is to be located, after NRC has issued a construction authorization, in order to mitigate the impacts of development of the repository. *Ibid.* The Waste Policy Act also contains requirements that DOE hold public hearings at several stages of site selection and characterization (Sec. 112(b)(2), 42 U.S.C. 10132 (nomination); Sec. 113(b)(2), 42 U.S.C. 10133 (characterization); Sec. 114(a)(1), 42 U.S.C. 10134 (recommendation for development)). The designation of a site as suitable for application for a construction authorization will not be effective over State objections except pursuant to a Congressional resolution which thereafter becomes law (Sec. 115, 42 U.S.C. 10135).

The Waste Policy Act reconfirms the authority and responsibility of the Commission to review a specific repository proposal, pursuant to the Atomic Energy Act, in order to protect the public health and safety. The Waste Policy Act provides for Commission review prior to site characterization, as well as in a formal licensing proceeding, and for a Commission determination as to whether a repository of a particular design at a specified site will provide adequate isolation of radioactive waste. The Waste Policy Act makes no specific provision for the Commission to engage in, or independently review, the processes of site screening and selection. The Commission's only prescribed participation in this selection process comes in NRC's review and concurrence in guidelines for the recommendation of sites for repositories (Sec. 112(a), 42 U.S.C. 10132). However, the Commission will review DOE's draft environmental assessments as it would review any other information on site investigation and site characterization, in order to allow early identification of potential licensing issues for timely resolution. Reviews will be carried out in accord with the procedural agreement between NRC and DOE for interface during site investigation and site characterization.[3]

While the Waste Policy Act establishes new procedures for the high-level waste management program, the Commission remains entirely free to consult with the States and Indian tribes, at its own initiative or theirs, with respect to any matter pertaining to NRC's regulatory role. Although specific channels are established for States and Indian tribes to engage in consultation and cooperation with DOE, these cannot substitute for direct interaction with NRC with respect to this agency's functions. Nevertheless, an examination of the details of the Waste Policy Act highlights differences from Part 60 which need to be taken into account. In addition, there are some changes—particularly with respect to funding of State participation—that would have been desirable even in the absence of the new legislation. The need for revisions can be analyzed using the same heading as before.

1. Site Characterization Report

As is the case under the existing regulations, it is appropriate that the submission of information about a site and plans for characterization of the site should be the occasion for commencing NRC's initial substantive review. However, the Waste Policy Act specifies a number of actions DOE must take before such information is required to be submitted to NRC. Further, the Waste Policy Act calls for NRC to review information of narrower scope than that which, under 10 CFR Part 60, was to be included in the DOE site characterization report.

Under § 60.11, the site characterization report was to be furnished to NRC "as early as possible after commencement of planning" for a particular repository. In contrast, the Waste Policy Act requires that DOE first nominate several sites (after holding public hearings and consulting with the governors of affected States) and that particular locations would then be recommended as candidate sites which, if approved by the President, would be eligible for site characterization.

The new law marks this time—before DOE proceeds to sink shafts—as the point when the site characterization plan is submitted. When the Commission reviews this plan, the site to be characterized will already have been the subject of extensive scrutiny. It will have been described in an environmental assessment in which the siting guidelines are applied and will have been discussed at public meetings at which public comments will have been solicited and received. It also will have been reviewed by both DOE and the President in the course of the nomination approval process. Extensive data gathering programs may have been carried out in conjunction with these activities.

DOE may very well need to make choices and commitments in the course of such data gathering that could have a significant bearing upon the safety and licensability of a repository. The drilling of boreholes for testing purposes, for example, could affect the integrity of a

[3] Procedural Agreement between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy identifying guiding principles for interface during site investigation and site characterization. 48 FR 38701, August 25, 1983. The Procedural Agreement is designed to assure that an information flow is maintained to facilitate each agency's accomplishment of its responsibilities relative to site investigation and characterization. The Procedural Agreement also provides that DOE is to notify potential host States and affected Indian tribes of technical meetings between DOE and NRC technical staff and that DOE is to invite those States and tribes to attend. These technical meetings will be open meetings, with members of the public being permitted to attend as observers.

repository that might be constructed at the site. Close coordination between DOE and NRC is therefore needed prior to submission of the site characterization report so as to facilitate the early identification of issues of potential safety significance and so as to afford an opportunity for NRC to provide DOE with timely views.

Under the Waste Policy Act, the information which is to be submitted to the Commission for review and comment prior to site characterization is similar to existing § 60.11. Both Part 60 and the statute call for DOE to describe the site, the proposed site characterization activities, a conceptual repository design, and certain information with respect to waste form or packaging. However, several categories of information which were previously listed in § 60.11 are omitted under the Waste Policy Act from the required submission to NRC—notably, the method by which the site was selected for site characterization, the identification and location of alternative media and sites at which DOE intends to conduct site characterization, and a description of the decision process by which the site was selected for characterization (including the means used to obtain public, Indian tribal and State views during selection).

The Waste Policy Act still requires a discussion of the omitted items, but in a separate document called an environmental assessment (Sec. 112(b)(1), 42 U.S.C. 10132). The preparation of an environmental assessment is to be preceded by public hearings held by DOE and consultation by DOE with governors of affected States. *Ibid.* Although not required to do so by the Waste Policy Act, DOE intends to make environmental assessments in draft form available for public comment. All this occurs in connection with the nomination of a site prior to Presidential review and approval of a candidate site for site characterization.

The Waste Policy Act makes no provision for the Commission to comment to DOE on its environmental assessments or otherwise to participate in the nomination process. It is nevertheless the intention of the Commission to review and comment on the environmental assessments, as well as other technical documents being prepared by DOE, in order to assess on a continuing basis the information collected to date and the program for the development of additional information for a potential license application. However, the NRC staff would not comment upon the methodology used by DOE to compare sites or upon the relative merits of one site against another. Such a review by NRC is not necessary to fulfill any of its statutory responsibilities. Moreover DOE will be selecting sites using guidelines in which the NRC will have already concurred. We regard it as appropriate, however, and fully consistent with the objectives of the Waste Policy Act, for the NRC staff to provide to DOE current expressions of its views on the quality of the data available and the potential licensing issues that may be anticipated and that may need to be addressed in DOE's site investigation and site characterization activities.

In view of the foregoing considerations, § 60.11 needs to be revised to change both the timing and content of the DOE site characterization report to conform to the Waste Policy Act. Despite these changes, however, the Commission plans to be involved at earlier stages in reviewing data collected by DOE as well as its programs for gathering additional data. The instrument for accomplishing this—namely, the Procedural Agreement referred to above—is already in place and is being implemented routinely.

2. Notice and Publication

The Waste Policy Act provides that: "Before nominating a site, the Secretary [of Energy] shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination" (Sec. 112(b)(1)(H), 42 U.S.C. 10132). Later, after public hearings and a prescribed review process involving Presidential approval, DOE must submit site characterization plans to those same officials, for review and comment; concurrently, DOE is required to submit such plans to NRC (Sec. 113(b)(1), 42 U.S.C. 10133). Although publication of notice in the **Federal Register** is not required expressly, DOE must make both the environmental assessment and the site characterization plan "available to the public" [Secs. 112(b)(1)(G), 113(b)(2)(A), 42 U.S.C. 10132–33]. The Commission anticipates that DOE will give notice in the **Federal Register** as the means for assuring adequate public availability of these documents.

Since DOE is required to make its site characterization plan available to State and tribal officials and to the public, duplicative provisions may be removed from Part 60. Even so, however, it makes sense for the Commission to publicly acknowledge receipt of DOE's submission so as to provide notice of the opportunity for consultation thereon with the NRC staff.

3. Site Characterization Analysis.

The Waste Policy Act requires, before DOE proceeds to sink shafts at a candidate site, that DOE submit its site characterization plans to NRC (as well as State and tribal officials) for review and comment (Sec. 113(b), 42 U.S.C. 10133). The Commission believes that Congress intended that DOE should provide the plans sufficiently far in advance so that comments may be developed and submitted back to DOE early enough to be considered when shaft sinking occurs, and at all time thereafter. As explained above, this implies an ongoing working relationship with DOE to assure that its data and assessments are made available to NRC as they are developed. As already mentioned, NRC and DOE have, in fact, developed a Procedural Agreement under which NRC is to have access to information as it is generated and, equally important, NRC is to comment regularly to DOE with respect to this information.

Thus, the Commission expects that the principal means of evaluation will be the interagency process that begins early in DOE's consideration of a site. When investigations have progressed far enough to warrant sinking of shafts, it is our expectation that NRC will already be adquately informed with respect to data generated to date and that NRC's concerns would already have been focused and brought to the attention of DOE. Assuming this to be the case, NRC should be in a position to complete its review and provide comments to DOE, as required by the Waste Policy Act, in a prompt fashion. The site characterization analysis would be a continuing dynamic process, better suited for ongoing public input and NRC review, rather than "freezing" the comment and review process at one arbitrary point in time.

An ongoing public review process would also facilitate DOE's ability to obtain comments on its site characterization plan from the States and Indian tribes as well. The Waste Policy Act affords an opportunity for these entities to enter into written agreements with DOE specifying procedures for consultation and cooperation that could include early review. Moreover, the NRC/DOE Procedural Agreement assures that States and Indian tribes will have an opportunity to be informed routinely concerning the information made available to NRC and NRC's comments

thereon and to attend NRC/DOE technical meetings.

Under existing 10 CFR Part 60, DOE's submission of site characterization plans was to occur, as already noted, "as early as possible after commencement of planning" for a particular repository. There was no assurance that either NRC or other interested parties would have had prior information about the site or any opportunity to make conerns known to DOE. It was in this context that the Commission determined that NRC would prepare a draft site characterization analysis for public review and comment before developing a statement of the agency's views for consideration by DOE.

Under the Waste Policy Act, however, DOE's submission comes after an extensive period of interaction between DOE and the States, affected Indian tribes, and the public, and after Presidential review and approval of the sites recommended for characterization. By the time a site characterization plan is to be submitted for review and comment, there should have been ample opportunity for NRC to have become acquainted with both DOE's programs and the public's concerns. Since technical meetings under the Procedural Agreement will be open, interested parties will have an opportunity to follow the course of NRC activities and to bring their concerns to the attention of NRC. Further opportunities for public involvement are provided by law, since DOE must also seek the comments of the States and tribes, and hold public hearings in the vicinity of the site. For these reasons, together with the scheduling mandates of the Waste Policy Act, the Commission believes it is no longer necessary to prepare a draft site characterization analysis on which public comment is sought. The Commission particularly asks for views on this proposed change.

It should be emphasized, however, that NRC will have been engaged in an ongoing review of DOE's activities even before submission of a site characterization plan and that the comments of interested parties may be submitted at any time for consideration as a part of that review process.

4. Consultation

Under the Waste Policy Act, the Commission is directed to provide "timely and complete information regarding determinations or plans made with respect to site characterization, siting, development, design, licensing, construction, operation, regulation, or decommissioning" of a repository, Sec. 117, 42 U.S.C. 10137, but this affords no rights to States and Indian tribes beyond those already provided in law. H.R. Rep. 97-785, Part I at 74. The proposed amendments contain conforming language implementing this requirement. The Waste Policy Act charges DOE with the responsibility to "consult and cooperate" with the States and Indian tribes in an effort to resolve their concerns about the safety, environmental, and economic impacts of a repository. States may make comments and recommendations to DOE regarding any activities taken under this subtitle," and this may be funded by grants from DOE (Sec. 116(c)(1)(B)(v), 42 U.S.C. 10136). DOE is directed to take State and Indian concerns into account "to the maximum extent feasible" (Sec. 117(b), 42 U.S.C. 10137). Accordingly, in expectation that States and tribes will communicate directly with DOE with respect to its site characterization plans, the provision that the Director will respond to questions and comments of the States and tribes on DOE's plans has been deleted.

However, the Commission has consistently expressed its intention to maintain a dialogue with the States, Indian tribes, and members of the public. This intention is unchanged. The scope of such dialogue may appropriately extend to any issue which must be considered and resolved by NRC in the discharge of its licensing responsibilities.

5. Proposals for State Participation

Subpart C of 10 CFR Part 60 provides for the filing of proposals by States and Indian tribes for participation in reviews of site characterization reports and license applications. In response to such proposals, NRC would consider providing certain educational or information services and funding work that the State proposes to perform for the Commission, under contract, in support of the review.

With enactment of the Waste Policy Act, authority to fund a broad variety of State activities, including grants to enable a State "to review activities . . . for purposes of determining any potential economic, social, public health and safety, and environmental impacts" of a repository has been vested in DOE. Sec. 116(c)(1)(B)(i), 42 U.S.C. 10136; see also Sec. 118(b)(2)(A)(i) (pertaining to affected Indian tribes). The scope of NRC assistance available may be limited by this statutory direction. However, other elements of Commission support would not be affected as explained in greater detail in the section-by-section analysis below.

6. Formal Licensing Procedures

The Waste Policy Act incorporates the basic licensing structure which had been described in the Commission's regulations. It expressly provides for consideration of a DOE application, subject to certain deadlines, "in accordance with the laws applicable to such applications" (Sec. 114(d), 42 U.S.C. 10134). Affected States and Indian tribes will be entitled to participate in the licensing proceedings.

The new requirement that DOE and NRC provide timely and complete information to the States and tribes, Sec. 117(a), 42 U.S.C. 10137, would apply to significant milestones in the formal adjudicatory process. The rule presently reflects this, and the Commission finds no need to modify the formal regulatory structure for licensing activities at geologic repositories.

Section-by-Section Analysis

In light of the foregoing considerations, the Commission is proposing to revise its licensing procedures with respect to disposal of high-level waste in geologic repositories. The following section-by-section analysis provides additional explanatory information. All references are to Title 10, Chapter I, Code of Federal Regulations. Other revisions, including changes that may be needed to conform with the Waste Policy Act's provisions for environmental reviews, will be the subject of separate rulemaking.

10 CFR Part 60, Subpart A

Section 60.2 Definitions.

The terms "Indian Tribe" and "Tribal organization" would no longer appear in Part 60 and the definitions of the terms have therefore been deleted. The term "affected Indian tribe," as defined in the Waste Policy Act, is the proper designation for those entities that are entitled to notice and other recognition under the rule. The proposed rule incorporates the statutory definition of "affected Indian tribe."

10 CFR Part 60, Subpart B

The sections in this subpart have been renumbered so as to allow for insertion of additional general provisions, if needed, at a future date.

Section 60.15 [formerly § 60.10] Site characterization.

No change.

Section 60.16-18 [formerly § 60.11].

The former section § 60.11, captioned "Site characterization report," has been

revised to conform to the Waste Policy Act. It has been divided into three sections in order to provide a clearer editorial structure.

The "site characterization report" has been changed to a "site characterization plan." Note that this includes more than DOE's "general plan for site characterization activities;" conforming to Sec. 113(b), 42 U.S.C. 10133, it must also incorporate information on waste form and packaging as well as a conceptual repository design. The change from "report" to "plan" better conveys to sense that DOE is describing a program to obtain information which can be used later to evaluate a site, as opposed to a presentation of data which would allow a preliminary judgment as to site acceptability. The NRC review process at this stage is not directed to advising DOE whether or not the site is or is not satisfactory, but rather whether or not the characterization program (1) will generate data needed for arriving at subsequent licensing determinations and (2) will adversely and significantly affect the ability of the geologic repository to achieve the prescribed performance objectives.

Section 60.16 Site characterization plan required.

The requirement for DOE to submit a site characterization report appeared in § 60.11(a). As before, the document (now a "plan") is to be submitted to the Director of NRC's Office of Nuclear Material Safety and Safeguards. The purpose of the submission ("for review and comment") is derived from the Waste Policy Act. Similarly, the timing of the submission ("before proceeding to sink shafts") reflects the new statutory direction.

The regulation refers to characterization at any area which has been approved by the President for site characterization. Such an area would be a "candidate site" as defined in the Waste Policy Act. The regulation avoids that term, however, because it already defines "site" in a different way.

Section 60.17 Contents of site characterization plan.

This section restates, with minor changes, the information which the Waste Policy Act requires to be submitted to the Commission for review and comment.

Because Part 60 defines high-level radioactive waste to include spent nuclear fuel, the latter category of material is not referred to in § 60.17.

Consistent with other provisions of Part 60, the term "geologic repository operations area" (rather than "geologic repository" or "repository") is employed when the context pertains to the area in which waste handling activities are conducted.

Part 60 defines "host rock" as "the geologic medium in which the waste is emplaced." Accordingly, the rule refers to the waste-host rock relationship instead of the relationship of the waste form or packaging and the geologic medium. The statute's reference to the "packaging" for the waste corresponds to Part 60's "waste package," and the proposed rule retains the latter term for purposes of consistency.

The Waste Policy Act requires DOE to include in its general plan for site characterization activities "any other information required by the Commission." The Commission has so far identified only one such item—namely information with respect to quality assurance. Other information may hereafter be found to be needed to enable the Commission to determine whether the proposed site characterization activities are appropriate; if so, the Commission would establish its requirement either by rule (particularly if the information would be valuable on a generic basis) or by order in a particular case. Although the Commission's obligations to observe the statutory schedule must be heeded, there is no reason in principle why the submission of other information could not be ordered even after the site characterization plan had been filed, if required for the Commission to discharge its review and comment responsibilities effectively.

The Waste Policy Act's reference to plans to control any adverse, "safety-related" impacts from site characterization activities can be traced to former § 60.11(a)(6)(iii). The Commission's concern originally was that DOE address those aspects of site characterization that (1) could be significant with respect to radiological safety prior to permanent closure or (2) could affect the ability of the repository to satisfy the performance objectives pertaining to waste isolation. The proposed rule contains language that reflects this construction of the statute.

The Commission recognizes that the requested level of detail is not spelled out precisely. Such items as "a description of the area" and "a conceptual design for the geologic repository operations area that takes into account likely site-specific requirements" must not be read in isolation. They must be understood to require sufficient detail for the Commission and other statutory reviewers to be able to comment in an informed manner. So construed, the Commission believes that they are sufficiently clear; should additional information be needed, the Commission would retain the option, by order, to require further submissions.

As noted, the Commission has included an explicit statement that the site characterization plans should spell out DOE's quality assurance programs. Existing § 60.11 includes such language, but it was not included in the counterpart provision of the Waste Policy Act. However, since a principal aim of site characterization is to develop data that have been obtained and documented in a fashion which will support licensing findings, the NRC review should be concerned with the approach which DOE is taking to data collection, recording, and retention as well as to the content of the information which DOE seeks to assemble. Because of the importance it attaches to this item the Commission considers an explicit requirement for submission of information on quality assurance programs to be necessary.

We have also incorporated the statutory requirement that DOE is to include in its general plan a statement of the criteria to be used to determine suitability of the site for the location of a repository. Because site characterization will be a prerequisite for application of some guidelines, see Sec. 112(b)(1)(E)(ii), 42 U.S.C. 10132, we anticipate that the site characterization plan will also include a description of how DOE will use the information gathered during site characterization to determine if the site suitability guidelines are met.

The Waste Policy Act applies only with respect to geologic repositories that are used, at least in part, for the disposal of wastes from civilian nuclear activities. Sec. 8, 42 U.S.C. 10108. If DOE were to develop a facility exclusively for wastes from atomic energy defense activities, it would nevertheless be subject to licensing by NRC under the Energy Reorganization Act. The Commission has considered whether the changes proposed herein, which are largely responsive to the Waste Policy Act, would be appropriate with respect to such defense facilities. It appears that the Commission, acting under amended Part 60, could still effectively discharge its health and safety responsibilities for such defense waste facilities. But, in this section, the provisions that prescribe the contents of the site characterization plan need to recognize that defense-only facilities would not have any applicable siting criteria "developed pursuant to Section 112(a) of the Nuclear Waste Policy Act"; instead, in that case, the rule requires that the site

characterization plan set out the siting criteria actually used by DOE.

On environmental matters, the situation is more complex. The Waste Policy Act limitations with respect to the scope of the Commission's environmental responsibilities under NEPA—which we would implement in the modified procedures at the site characterization stage—would not apply to a repository used solely for defense wastes. Accordingly, the Commission would expect to require that DOE submit, with its site characterization plan for a defense facility, those items of information with respect to site screening and selection that appear in existing § 60.11(a) but which are not included in this proposed rule. Because the information relates to implementation of NEPA, it would be incorporated in revised 10 CFR Part 51 rather than Part 60.

Section 60.18 Review of site characterization activities.

As under existing § 60.11(b), the Commission will publish notice of receipt of DOE's site characterization plan. Although this may duplicate information published by DOE, it will serve to identify, to anyone interested, appropriate points of contact within the NRC staff. Since alternative areas are not required to be identified in the site characterization plan, the proposed rule omits any reference to such areas. Language pertaining to consultation has been revised to conform with proposed Subpart C.

Similarly, notwithstanding duplication of notice by DOE, the Commission will give direct notice to State and tribal officials concerning receipt of DOE's site characterization plan. Under the proposed rules, this information would be furnished to the officials entitled to timely and complete information under the Waste Policy Act. Because such officials would already have received copies of the site characterization plans from DOE, the notice from the Commission would not be accompanied by additional copies thereof. However, a copy of the site characterization plan would be placed in the pubic Document Room. (Existing § 60.11 would require local officials, and also the governors of contiguous States, to be afforded notice from NRC. This requirement has been deleted in the light of the new statutory provisions.)

For the reasons set out in the discussion above, the proposed rule omits the mandatory draft site characteeization analysis described in existing § 60.11. However, the proposed rule does provide that the Director may invite and consider comments on DOE's site characterization plan and that he may also review and consider the comments made in connection with the public hearings which Doe's is required to hold. Moreover, the Director will publish a notice of availability of a site characterization analysis and will invite host States, affected Indian tribes and all other interested persons to review and comment thereon. Comments received in respone to such invitation will be reviewed by the Director; and where the Director determines that there are substantial new grounds for making recommendation or stating objections to DOE's site characterization program, these concerns will be expressed to DOE.

The Director's review of the site characterization plan is substantially equivalent to the final site characterization analysis prescribe by existing § 60.11. The reference to the Director's "comments" reflects the Waste Policy Act provision that the information is submitted to the Commission for "review and comment." The proposed rule refers to a "statement" of objections by the Director, instead of a Director's "opinion" of objections by the Director, instead of a Director's "opinion"; the later term was unnecessarily equivocal. It is intended that the objections would be directed at the nature of the site characterization activities being proposed and not to the suitability of the site as such; of course, if it appeared that a particular site exhibited such a profound deficiency that it could not be compensated for adequately in the light of data from any site characterization program, the Director could object to the program in its entirety, but the Commission regards this as highly improbable given the procedures prior to submission of a site characterization plan to NRC specified in the Waste Policy Act.

The inclusion of a finding with respect to the necessity of using radioactive material implements the specific direction in Section 113(c)(2)(A), 42. U.S.C. 10133; the Commission has previously concluded that the use of source, special nuclear, and byproduct material for purposes of site characterization does not require a license, 10 CFR § 60.7, and there is no reason to believe that the Waste Policy Act was intended to change this view.

Since DOE is not required to prepare an environmental impact statement with respect to site characterization, see Sec. 113(d), 42 U.S.C. 10133, the references in references in existing § 60.11 to such statement have been omitted. A footnote to the text of the rule points out, however, that DOE's environmental assessments will be reviewed—as other DOE documents will be—for the purpose of early identification of potential licensing issues for timely resolution.

The Waste Policy Act requires the DOE report to the Commission (and to State and tribal authorities) at least semiannually on the nature and extent of site characterization activities and the information developed from such activities. The same concerns were addressed in existing § 60.11(g). The Commission believes the two formulations are essentially the same, but that the more detailed version in the NRC regulation provides a clearer statement of the information that is needed. Accordingly, the proposed rule conforms closely to the Commission's earlier rule. The most significant change, reflecting the adption of a statutory directive to DOE, is that the provisions are now expressed in mandatory ("shall") terms. Also, the existing rule includes a provision for submission of additional reports on any topic, if requested by the Director; as modified, such other topics must still be covered as requested by the Director, but the information may be included in the semiannual reports instead of "additional" ones. The Director will review the semiannual reports and, where appropriate on the basis of new information contained therein, the Director will make recommendations or state objections with respect to DOE's site characterization program.

The proposed rule provides for the Director to transmit to State and tribal officials copies of all comments made to DOE under § 60.18. This includes not only the site characterization analysis and comments on the site characterization plan, but also any other comments which the Director chooses to make by way of "expressing current views." Other correspondence between NRC and DOE will be placed in the Public Document Room, but will not routinely be distributed to the designated officials. The omission of the requirement that the Director consider comments received from States in accordance with § 60.61 conforms to the changes in Subpart C. Such comments may, however, be solicited and reviewed as appropriate in individual cases and, as noted, comments on the site characterization analysis will be invited and will be reviewed, and such review may be the basis for the director to express to DOE additional recommendations or objections.

Except for some editorial changes, othe provisions of §60.18 are the same as existing regulations.

10 CFR Part 60, Subpart C

This subpart deals with participation by State governments and Indian tribes in the Commission's licensing and pre-licensing activities. The role of the States and tribes in repository siting and development is addressed in great detail by several provisions in the Nuclear Waste policy Act. While the Commission finds that some changes in Subpart C are needed in light of those provisions, it remains our intention to encourage close working relations with the States and tribes. The revisions and designed to clarify the means by which this can be accomplished in a manner conforming to the new law.

Section 60.61 Provision of information

This section implements the requirement in the Waste Policy Act, Sec. 117(a), 42 U.S.C. 10137, that NRC furnish timely and complete information to host States and affected Indian tribes regarding its determinations or plans. It applies, insofar as Commission responsibilities are concerned, from the time a site characterization proposal is submitted throughout the entire life of the repository through "decommissioning." Consistent with other usage in Part 60, the phrase "permanent closure, or decontamination and dismantlement of surface facilities" is used instead of the statutory term "decommissioning."

Some of the most significant communications may consist of determinations made in the course of licensing proceedings. Under our rules of practice, parties on the service list in such proceedings are required to be served with notice of all relevant pleadings, decisions, order, etc. Accordingly, the Commission will use this established procedure as the means for providing information regarding licensing actions.

Section 60.62 Site review.

The Waste Policy Act establishes a structure for the involvement of States and affected Indian tribes. The proposed rule therefore provides explicitly for consultation with States and affected Indian tribes but omits mention of local governments. (However, the Commission anticipates, in light of the Waste Policy Act, see Sec. 116(c)(1)(B)(iv), 42 U.S.C. 10136, that the States would establish appropriate procedures to address local government and citizen concerns.)

Since the concerns of the States and affected Indian tribes will be dealt with primarily under the statutory consultation and cooperation procedures, the Commission has eliminated reference to any consultation activities by NRC that are more appropriately and directly carried out by DOE under those procedures. Thus, consistent with the Waste Policy Act, questions concerning DOE's site characterization submissions should be directed to DOE for its consideration and response, and notification concerning NRC meetings or consultations with DOE should be provided by DOE. Notwithstanding these changes, however, it remains the policy of the Commission that consultation with interested parties with respect to site characterization should be encouraged. As now, information would be available routinely with respect to NRC's views on the progress of site characterization, on NRC procedures, and on the development of proposals for participation in license reviews.

Although the Waste Policy Act does not provide formally for NRC activity prior to Presidential approval of an area for site characterization, and this is noted in revised § 60.62, there will be coordination during the earlier stages of site screening and site characterization in accordance with the Procedural Agreement between NRC and DOE; special provisions has been made in that agreement for States and Indian tribes to receive notice and to attend NRC/DOE meetings so as to enable them to engage knowledgeably, on an early and ongoing basis, in site characterization reviews.

The opportunity to request that the Director consult with respect to the NRC review of site characterization activities is not limited to prospective host States. The extent to which a State may be affected by the prospective location would, of course, be a factor for the Director to consider in determining the staff resources that would be made available for purposes of such consultation.

Section 60.63 Participation in license reviews.

This section is a substitute for the earlier §§ 60.62–60.65.

Section 60.63 acknowledges, first of all, that State and local governments and affected Indian tribes may participate in license reviews as provided in the Commission's rules of practice. Local governments are mentioned in this context because they may have standing, apart from the State in which they are located, to participate in a licensing proceeding as a party or participate in a more limited capacity. See 10 CFR 2.714, 2.715(c).

The regulation retains a provision for a State or affected Indian tribe to submit a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The existing requirement that proposals be submitted no later than 120 days after docketing of a license application has been eliminated; although early submissions are desirable, we can readily conceive of cases in which proposals submitted after review of a license application could be implemented in the mutual interests of the proposing entity and the Commission. The types of services or activities that NRC might consider providing would include those educational or information services and related actions that are set out in existing § 60.62(d).

The Commission has omitted those portions of existing § 60.62(c) that contemplate Commission funding of State work in support of the license review. In light of the Waste Policy Act, funding of such work to improve the State's capacity to review a license application is a responsibility of DOE and it is to be financed out of the Nuclear Waste Fund. We do not rule out the possibility that the NRC may contract with State governments on occasion for particular services that we may require in order to be able to discharge our statutory responsibilities effectively. The execution of such contracts would be carried out under established procurement procedures and would be subject to applicable limitations with respect to competitive bidding and avoidance of conflicts of interest. See 41 CFR Chapter I (Federal Procurement Regulations). A further reason for handling such contracts under the general procurement regulations rather than Part 60 is that the criteria for approval of proposals (existing § 60.63, proposed § 60.63(d)) would be inappropriate when the Commission's purpose is to acquire services which it needs in discharging its own reviewing functions.

Considering this limitation of the scope of NRC activities under Subpart C, the requirement for gubernatorial approval of a State proposal has been eliminated as being unnecessary. The information required to be included in the proposal has also been modified to conform to the limitation of scope. The Waste Policy Act may have further limited the opportunities for states to receive funding from the NRC, the Commission is of the view that Congress intended that DOE should assume the Federal responsibility for activities of the types described in Sections 116 and 118 and that such activities should be

financed out of the Nuclear Waste Fund rather than out of NRC appropriations.

Existing § 60.64, pertaining to participation of Indian tribes, has been incorporated in the substantive provisions applicable to States. The change has been made for editorial reasons and is not intended to affect the right of affected Indian tribes to participate like the States in the activities described in Subpart C.

Existing § 60.65, dealing with coordination of multiple proposals, has been deleted. The Commission deems it unlikely that multiple proposals of the kinds considered eligible for acceptance under Subpart C would present any undue administrative difficulties; the criteria for approval of proposals (especially the finding of "productive contribution" to the license review) would afford the Director adequate discretion to take into account the desirability of avoiding duplication.

Section 60.64 Notice to States.

The Commission encourages the Governor and legislature of a State to jointly designate a single point of contact to receive notice and information from the Commission. This section provides for notice to such jointly designated nominees.

Section 60.65 Representation.

Under the present rule, the signature of the Governor would serve to document the authority pursuant to which proposals were being submitted to the Commission. Submissions by Indian tribes were to be accompanied by documentation of the eligibility of the tribe and the authority of its representatives. This section is designed to retain the principle of assuring that representatives are properly identified. With respect to States, a change is needed to reflect the fact that proposals will no longer need to be signed by the Governor. In the case of Indian tribes, the determination by the Secretary of the Interior that it is "affected" eliminates the need for the Commission to be concerned with its eligibility.

Commissioner Asselstine's Additional Views

Commissioner Asselstine would retain the present requirement in 10 CFR 60.11 for NRC review of the site screening and selection process which DOE must now include in the environmental assessments. He would cite as the Commission's authority to review the draft environmental assessments the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the National Environmental Policy Act of 1969, as amended, and the Nuclear Waste Policy Act of 1982, and not just the NRC/DOE Procedural Agreement.

Commissioner Asselstine would also retain the present requirement in 10 CFR 60.11 for NRC issuance of the draft site characterization analyses for public comment.

Commissioner Asselstine would appreciate comment on whether these two elements should be retained in the Commission's regulations.

Environmental Impact

Pursuant to section 121(c) of the Nuclear Waste Policy Act, this proposed rule does not require the preparation of an environmental impact statement under section 102(2)(c) of the National Environmental Policy Act of 1969 or any environmental review under subparagraph (E) or (F) of section 102(2) of such act.

Paperwork Reduction Act Statement

This proposed rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et. seq.). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule relates to the licensing of only one entity, the U.S. Department of Energy, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act.

List of Subjects in 10 CFR Part 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

Issuance

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the Nuclear Regulatory Commission proposes to adopt the following amendment to 10 CFR Part 60.

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES

1. The authority citation for Part 60 continues to read as follows:

Authority—Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97-425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of Sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.71 to 60.75 are issued under Sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201o)).

2. Section 60.2 is revised by removing the definitions of "Indian tribe" and "Tribal organization" and inserting, in the appropriate alphabetical location, a definition of the term "affected Indian tribe" to read as follows:

§ 60.2 Definitions.

As used in this part—

* * * * *

"Affected Indian tribe" means an affected Indian tribe as defined in the Nuclear Waste Policy Act of 1982.

* * * * *

§ 60.10 [Redesignated as § 60.15]

3. Section 60.10 is Redesignated § 60.15.

§ 60.11 [Removed]

4. Section 60.11 is Removed.

5. Sections 60.16 through 60.18 are added to read as follows:

§ 60.16 Site characterization plan required.

Before proceeding to sink shafts at any area which has been approved by the President for site characterization, DOE shall submit to the Director, for review and comment, a site characterization plan for such area.

§ 60.17 Contents of site characterization plan.

The site characterization plan shall contain—

(a) A general plan for site characterization activities to be conducted at the area to be characterized, which general plan shall include—

(1) A description of such area, including information on quality assurance programs that have been applied to the collection, recording, and retention of information used in preparing such description.

(2) A description of such site characterization activities, including the following—

(i) The extent of planned excavations;

(ii) Plans for any onsite testing with radioactive or nonradioactive material;

(iii) Plans for any investigation activities that may affect the capability of such area to isolate high-level radioactive waste;

(iv) Plans to control any adverse impacts from such site characterization activities that are important to safety or that are important to waste isolation; and

(v) Plans to apply quality assurance to data collection, recording, and retention.

(3) Plans for the decontamination and decommissioning of such area, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities, if such area is determined unsuitable for application for a construction authorization for a geologic repository operations area;

(4) Criteria, developed pursuant to section 112(a) of the Nuclear Waste Policy Act of 1982 (or in the case of a geologic repository that is not subject to the Waste Policy Act, such other siting criteria as may have been used by DOE), to be used to determine the suitability of such area for the location of a geologic repository; and

(5) Any other information which the Commission, by rule or order, requires.

(b) A description of the possible waste form or waste package for the high-level radioactive waste to be emplaced in such geologic repository, a description (to the extent practicable) of the relationship between such waste form or waste package and the host rock at such area, and a description of the activities being conducted by DOE with respect to such possible waste form or waste package or their relationship; and

(c) A conceptual design for the geologic repository operations area that takes into account likely site-specific requirements.

§ 60.18 Review of site characterization activities.[1]

(a) The Director shall cause to be published in the **Federal Register** a notice that a site characterization plan has been received from DOE and that a staff review of such plan has begun. The notice shall identify the area to be characterized and the NRC staff members to be consulted for further information.

(b) The Director shall make a copy of the site characterization plan available at the Public Document Room. The Director shall also transmit copies of the published notice of receipt to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe. In addition, the Director shall make NRC staff available to consult with States and affected Indian tribes as provided in Subpart C of this part.

(c) The Director shall review the site characterization plan and prepare a site characterization analysis with respect to such plan. In the preparation of such site characterization analysis, the Directior may invite and consider the views of interested persons on DOE's site characterization plan and may review and consider comments made in connection with public hearings held by DOE.

(d) The Director shall provide to DOE the site characterization analysis together with such additional comments as may be warranted. These comments shall include either a statement that the Director has no objection to the DOE's site characterization program, if such a statement is appropriate, or specific objections with respet to DOE's program for characterization of the area concerned. In addition, the Director may make specific recommendations pertinent to DOE's site characterization program.

(e) If DOE's planned site characterization activities include onsite testing with radioactive material, the Director's comments shall include a determination regarding whether or not the Commission concurs that the proposed use of such radioactive material is necessary to provide data for the preparation of the environmental reports required by law and for an application to be submitted under § 60.22 of this part.

(f) The Director shall publish in the **Federal Register** a notice of availability of the site characterization analysis and a request for public comment. A reasonable period, not less than 90 days, shall be allowed for comment. Copies of the site characterization analyses and of the comments received shall be made available at the Public Document Room.

(g) During the conduct of site characterization activities, DOE shall report not less than once every six months to the Commission on the nature and extent of such activities and the information that has been developed and on the progress of waste form and waste package research and development. The semiannual reports shall include the results of site characterization studies, the identification of new issues, plans for additional studies to resolve new issues, elimination of planned studies no longer necessary, identification of decision points reached and modifications to schedules where appropriate. DOE shall also report its progress in developing the design of a geologic repository operations area appropriate for the area being characterized, noting when key design parameters or features which depend upon the results of site characterization will be established. Other topics related to site characterization shall also be covered if requested by the Director.

(h) During the conduct of site characterization activities, NRC staff shall be permitted to visit and inspect the locations at which such activities are carried out and to observe excavations, borings, and in site tests as they are done.

(i) The Director may comment at any time in writing to DOE, expressing current views on any aspect of site characterization. In particular, such comments shall be made whenever the Director, upon review of comments invited on the site characterization analysis or upon review of DOE's semiannual reports, determines that there are substantial new grounds for making recommendations or stating objections to DOE's site characterization program.

(j) The Director shall transmit copies of the site characterization analysis and all comments to DOE made by him under this section to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe. When transmitting the site characterization analysis under this paragraph, the Director shall invite the addressees to review and comment thereon.

(k) All correspondence between DOE and the NRC under this section, including the reports described in paragraph (g), shall be placed in the Public Document Room.

(l) The activities described in paragraphs (a) through (k) above constitute informal conference between a prospective applicant and the staff, as described in § 2.101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as

[1] In addition to the review of site characterization activities specified in this section, the Commission contemplates an ongoing review of other information on site investigation and site characterization, in order to allow early identification of potential licensing issues for timely resolution. This activity will include, for example, a review of the environmental assessments prepared by DOE at the time of site nomination. A procedural agreement covering NRC-DOE interface during site investigation and site characterization has been published in the **Federal Register**, 48 FR 38701, August 25, 1983.

amended. Accordingly, neither the issuance of a site characterization analysis nor any other comments of the Director made under this section constitute a commitment to issue any authorization or license or in any way affect the authority of the Commission, the Atomic Safety and Licensing Appeal Board, Atomic Safty and Licensing Boards, other presiding officers, or the Director, in any such proceeding.

6. Subpart C is revised to read as follows:

Subpart C—Participation by State Governments and Indian Tribes

§ 60.61 Provision of information.

(a) The Director shall provide to the Governor and legislature of any State in which a geologic repository operations area is or may be located, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made by the Commission with respect to the site characterization, siting, development, design, licensing, construction, operation, regulation, permanent closure, or decontamination and dismantlemenmt of surface facilities, of such geologic respository operations area.

(b) For purposes of this section, a geologic repository operations area shall be considered to be one which "may be located" in a State if the location thereof in such State has been described in a site characterization plan submitted to the Commission under this part.

(c) Notwithstanding paragraph (a), the Director is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

(d) Copies of all communications by the Director under this section shall be placed in the Public Document Room, and copies thereof shall be furnished to DOE.

§ 60.62 Site review.

(a) Whenever an area has been approved by the President for site characterization, and upon request of a State or an affected Indian tribe, the Director shall make NRC staff available to consult with representatives of such States and tribes.

(b) Requests for consultation shall be made in writing to the Director.

(c) Consultation under this section may include:

(1) Keeping the parties informed of the Director' views on the progress of site characterization.

(2) Review of applicable NRC regulations, licensing procedures, schedules, and opportunities for state participation in the Commission's regulatory activities.

(3) Cooperation in development of proposals for State participation in license reviews.

§ 60.63 Participation in license reviews.

(a) State and local governments and affected Indian tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter.

(b) In addition, whenever an area has been approved by the President for site characterization, a State or an affected Indian tribe may submit to the Director a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The proposal may be submitted at any time and shall contain a description and schedule of how the State or affected Indian tribe wishes to participate in the review, of what services or activities the State or affected Indian tribe wishes NCR to carry out, and how the services or activities proposed to be carried out by NCR would contribute to such participation. The proposal may include educational or information services (seminars, public meetings) or other actions on the part of NCR, such as establishing additional public document rooms or employment or exchange of State personnel under the Intergovernmental Personnel Act.

(c) The Director shall arrange for a meeting between the representatives of the State or affected Indian tribe and the NCR staff to discuss any proposal submitted under paragraph (b) of this section, with a view of identifying any modifications that may contribute to the effective participation by such State or tribe.

(d) Subject to the availability of funds, the Director shall approve all or part of a proposal, as it may be modified through the meeting described above, if it is determined that:

(1) The proposed activities are suitable in light of the type and magnitude of impacts which the State or affected Indian tribe may bear;

(2) The proposed activities (i) will enhance communications between NRC and the State or affected Indian tribe (ii) will make a productive and timely contribution to the review and (iii) are authorized by law.

(e) The Director will advise the State or affected Indian tribe whether its proposal has been accepted or denied, and if all or any part of proposal is denied, the Director shall state the reason for the denial.

(f) Proposals submitted under this section, and responses thereto, shall be made available at the Public Document Room.

§ 60.64 Notice to States.

If the Governor and legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and legislature separately.

§ 60.65 Representation.

Any person who acts under this subpart as a representative for a State (or for the Governor or legislature thereof) or for an affected Indian tribe shall include in his request or other submission, or at the request of the Commission, a statement of the basis of his authority to act in such representative capacity.

Dated at Washington, D.C. this 10th day of January, 1985.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 85-1401 Filed 01-16-85; 8:45 am]

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efforts to identify some of the issues appropriate for such resolution. Formal generic resolution will facilitate the closing out and narrowing of issues and consequently help avoid delays in the license process.

It may be appropriate to include specific milestones in the Project Decision Schedule for issues we intend to pursue through formal resolution when they are identified. We also recommend that DOE identify licensing issues that it would propose for formal resolution, and discuss them with NRC promptly. As these issues are identified, DOE should add milestones for their resolution to the Project Decision Schedule or its updates. Please refer to our July 31, 1984 comments on the Draft Mission Plan for further discussion of issue resolution (Enclosure 3 of Mission Plan comments, p. 5).

Finally, I would like to note that our comments are based on the staff's estimate of the required duration of NRC activities, including time for Commission involvement as appropriate. We have begun discussions with the Commission to address the planned duration of NRC high-level waste actions, but have not yet obtained Commission endorsement of these estimates. Therefore, the comments on specific milestones are subject to change in our comments on the Draft Project Decision Schedule, which will be approved by the Commission and signed out by the Chairman.

Thank you for giving us the opportunity to participate in this early stage of development of the Project Decision Schedule. Please contact Mr. Robert E. Browning, Director of the Division of Waste Management, if you would like to discuss any of these comments further.

Sincerely,

John G. Davis, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:
1. NRC Comments on Draft Project Decision Schedule
2. Proposed 10 CFR 60 Procedural Amendments

NMSS M
DMAUSSHARDT
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JDAVIS
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Record Note: Coordinated with FC.

*See previous concurrence

OFC	:WMPC *	:WMPC *	:WMPC	:WMRP *	:FC	:ELD for WSO	:WM
NAME	:NNumark	:MKearney	:JBunting	:HMiller	:	: RCHeirton	:RBrowning
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It may be appropriate to include specific milestones in the Project Decision Schedule for issues we intend to pursue through formal resolution when they are identified. We also recommend that DOE consider what potential licensing issues it plans to propose for formal resolution, and discuss the issues with NRC promptly. As these issue are identified, DOE should add milestones for their resolution to the Project Decision Schedule or its updates. Please refer to our July 31, 1984 comments on the Draft Mission Plan for further discussion of issue resolution (Enclosure 3 of Mission Plan comments, p. 5).

Finally, I would like to note that our comments are based on the staff's estimate of the required duration of NRC activities, including time for Commission involvement as appropriate. We have begun discussions with the Commission to address the planned duration of NRC high-level waste actions, but have not yet obtained Commission endorsement of these estimates. Therefore, the comments on specific milestones are subject to change in our comments on the Draft Project Decision Schedule, which will be approved by the Commission and signed out by the Chairman.

Thank you for giving us the opportunity to participate in this early stage of development of the Project Decision Schedule. Please contact Mr. Robert E. Browning, Director of the Division of Waste Management, if you would like to discuss any of these comments further.

Sincerely,

John G. Davis, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:
1. NRC Comments on Draft
   Project Decision Schedule
2. Proposed 10 CFR 60
   Procedural Amendments

NMSS
DMausshardt
85/

NMSS
JDavis
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OFC	:WMPC	:WMPC	:WMPC	:WMRP	:FC	:ELD	:WM
NAME	:NNumark	:MKearney	:JBunting	:HMiller	:	:	:RBrowning
DATE	:85/02/21	:85/02/22	:85/	:85/	:85/	:85/	:85/

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PDS/NN/85/02/14

Mr. Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Rusche:

In response to your letter of January 15, 1985, I am pleased to provide the enclosed NRC staff comments (Enclosure 1) on the preliminary draft Project Decision Schedule. As you requested, we have focused our comments on the accuracy, clarity, and completeness of the information presented, and have addressed the expected duration of key program activities rather than the actual dates shown for their completion. I anticipate that the actual dates you will be proposing for NRC to commit to will be provided in the Draft Project Decision Schedule, which I understand will be issued after the Mission Plan is finalized.

With the exception of items noted in the enclosed comments, we believe this preliminary draft provides the appropriate level of detail and contains the necessary NRC milestones and lead times. One area which could become problematic if not corrected is that the preliminary draft does not recognize all of the steps involved in obtaining from NRC the license for a repository under 10 CFR Part 60. Therefore, the staff has devoted one section of the enclosed comments specifically to revisions to ensure that the licensing process is accurately described and schedule implications are understood by DOE. Further clarification of NRC's licensing process can be found in our July 31, 1984 comments to you on the Draft Mission Plan (Enclosure 2 of Mission Plan comments, p. 11). Both the Final Mission Plan and the Draft Project Decision Schedule should reflect an understanding of these requirements. My staff is available to discuss this if further clarification is necessary.

The schedules presented in the preliminary draft assume a 10-month period for NRC's preparation of final Site Characterization Analyses, in accordance with the current procedural requirements of 10 CFR Part 60. Proposed amendments to these requirements were published by NRC on January 17, 1985 and are provided in Enclosure 2. We have estimated that these amendments would reduce the time period for preparation of SCA's to 5 months. However, the 10-month schedule should continue to be used for planning purposes until the schedular impact of the final version of these amendments has been assessed.

Most of the other comments in Enclosure 1 relate to specific milestones. Adjustments to the proposed schedules for NRC actions have been recommended for Draft EIS comments, "preliminary sufficiency comments" (Section 114(a)(1)(E) of

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NWPA), adoption of the Final EIS, comments on the MRS proposal, and concurrence in the use of radioactive material in site characterization, among others. The milestones not addressed in the comments appear to be satisfactory, but we await the program details in the Final Mission Plan before we can recommend that the Commission commit to specific schedules. Additional comments address the timing of the preliminary determination of site suitability, the need for additional information on the two-stage construction plan, planned activities during the site characterization phase, and other subjects.

NRC's position on the proposed milestones, including those which are not addressed in the comments since they appear to be satisfactory, is based on two important assumptions. First, we assume that adequate resources will be provided to the NRC to perform its functions on schedule. However, as NRC has recently informed its Congressional oversight committees, OMB reductions have resulted in a significant shortfall in our high-level waste program resources for FY86, which may cause a delay in DOE's initiation of shaft construction and in situ site characterization activities, as well as certain other delays. We will continue to assess the likely impact of budget restraints on our ability to meet DOE schedules, and will keep you informed of these impacts.

Second, our position on the license review schedules proposed in the preliminary draft assumes that DOE's license application will be high-quality and complete, providing all of the information NRC identifies as necessary as a basis for its licensing decisions. We believe this is an appropriate assumption because of the opportunities provided by NWPA, our regulations, and the NRC/DOE Procedural Agreement for interaction between NRC and DOE on the large number of potential licensing issues which must be addressed. These opportunities include NRC staff comments on DOE's Site Characterization Plans and their updates, and staff resolution of potential licensing issues through issuance of staff technical positions and the informal prelicensing consultation process before decisions are made by DOE on long lead time items and major resources are committed. The Project Decision Schedule should explicitly recognize that meeting the major milestones contained in it requires meeting many other internal milestones within the DOE development and site characterization program, and depends upon consultation with the NRC staff at these points.

NRC's prelicensing consultation and guidance is intended to assure that DOE's program provides essential and acceptable data without costly delay or rework, and to develop the methods for DOE to demonstrate compliance with performance objectives in 10 CFR Part 60. This will permit an independent determination on the adequacy of DOE's program. NRC is also considering selected licensing issues for generic resolution through formal rulemaking and other mechanisms, and we have begun

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

March 1, 1985

NOTE TO: John G. Davis

FROM: Robert E. Browning

SUBJECT: DOE'S DRAFT PROJECT DECISION SCHEDULE

The proposed comments on DOE's Draft Project Decision Schedule have been modified to incorporate your comments.

Also attached is a copy of your mark-up noting specific word changes made to your suggested words.

Please let me know if you'd like to discuss this further.

R E Browning
Robert E. Browning

Date

ROUTING AND TRANSMITTAL SLIP

TO: (Name, office symbol, room number, building, Agency/Post)	Initials	Date
1. NNumark		
2. ~~MKearney~~		
3. ~~JBunting~~		
4. ~~WMiller~~		
5. ~~RBrowning~~/DMa[illegible]shardt/JDavis		

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	Circulate		For Your Information		See Me
	Comment		Investigate		Signature
	Coordination		Justify		

REMARKS

Letter to Ben C. Rusche

JOE: Neil and I have NO OUTSTANDING ISSUES TO DISCUSS.
—WSK
2/26

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

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

February 25, 1985

NOTE TO: R. E. Browning

FROM: John G. Davis

SUBJECT: COMMENTS ON DRAFT PROJECT DECISION SCHEDULE

I have the following comments:

1. Letter to Rusche

   A. The letter seems to be quite long for transmitting comments on a preliminary draft document. The important points in the letter risk being lost in its length. Since several of our comments are driven by the level of detail in the PDS, it might be well to discuss this level in the letter. I note that Rusche's 1/15/85 letter speaks of "key activities, decision points and deadlines." Do our comments suggest inclusion of detail beyond key actions? I presume not and my comments are based on this presumption.

   B. Please note my suggested shortening of the letter. I believe it contains the key points in your version. Once you have had an opportunity to consider, let's discuss the letter.

2. Specific Milestones

   A. #2--The phrase "are confusing" may be better expressed as "are not clear."

   B. #3--Suggest that the sentence, "Therefore, NRC believes that the existing guidance provides adequate direction for DOE in preparing SCP's and it should not be implied that site characterization schedules depend on the schedule for this revision . . ." be revised to read something like, "Therefore, NRC believes that the existing guidance provides adequate direction for DOE in preparing SCPs. We recommend that the third sentence, second paragraph, p. 30 be revised to read, "The revision is minor and the current Regulatory Guide 4.17 provides sufficient guidance for current DOE purposes. RG 4.17 will be made final after rulemaking is completed to amend 10 CFR 60 procedural requirements to conform to NWPA. This is forecasted by _____."

   C. #5--What is source of "indications" of MRS slippage? You might want to say, "Media reports of comments by DOE" (or whatever the source of the indications).

3. Licensing Process

4. Other Comments

   A. #1--Let's discuss this.

John G. Davis

cc: D. B. Mausshardt

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

Mr. Ben C. Rusche, Director
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy
Washington, D.C. 20585

Dear Mr. Rusche:

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With the exception of items noted in the enclosed comments, we believe this preliminary draft provides the appropriate level of detail and contains the necessary NRC milestones and lead times. ~~One area which could become problematic if not corrected is that the preliminary draft does not recognize all of the steps involved in obtaining from NRC the license for a repository under 10 CFR Part 60. Therefore, the staff has devoted one section of the enclosed comments specifically to revisions to ensure that the licensing process is accurately described and schedule implications are understood by DOE.~~ Further clarification of NRC's licensing process can be found in our July 31, 1984 comments to you on the Draft Mission Plan (Enclosure 2 of Mission Plan comments, p. 11). Both the Final Mission Plan and the Draft Project Decision Schedule should reflect an understanding of these requirements. ~~My staff is available to discuss this if further clarification is necessary.~~

are all Key?

The schedules presented in the preliminary draft assume a 10-month period for NRC's preparation of final Site Characterization Analyses, in accordance with the current procedural requirements of 10 CFR Part 60. Proposed amendments to these requirements were published by NRC on January 17, 1985 and are provided in Enclosure 2. We have estimated that these amendments would reduce the time period for preparation of SCA's to 5 months. However, the 10-month schedule should continue to be used for planning purposes until the schedular impact of the final version of these amendments has been assessed.

Most of the other comments in Enclosure 1 relate to specific milestones. Adjustments to the proposed schedules for NRC actions have been recommended for Draft EIS comments, "preliminary sufficiency comments" (Section 114(a)(1)(E) of

PP Since the licensing process under 10CFR60 is central to the NRC schedule and ~~not for~~ time, we believe all the key steps in this process should be identified in the PDS. Our comments primarily are aimed at identifying these key steps and time necessary to accomplish them. We previously have made similar comments on the Draft Mission Plan. We believe that clear reflection of this process is essential to understanding the Mission Plan and the PDS.

We would like to note that assuming timely rulemaking to conform Part 60 to the NWPA, the total time required under the NRC recommendations is essentially the same as that shown in the preliminary draft PDS.

Preliminary and Draft

Second, our estimates for timely resolution for NRC to perform its activities presume that the ongoing interaction between our agencies is successful. This continuing interaction should result in timely issue identification and should permit DOE to file a high-quality application with information sufficient to serve as a basis for licensing decisions. Our schedules do not provide for delays for rework or late accumulation of necessary information. We recognize that the PDS shows key activities. We believe its value would be enhanced if it noted that many subsidiary milestones, with opportunities for DOE/NRC interaction, are necessary to successfully meet these key milestones.

NWPA), adoption of the Final EIS, comments on the MRS proposal, and concurrence in the use of radioactive material in site characterization, among others. The milestones not addressed in the comments appear to be satisfactory, but we await the program details in the Final Mission Plan before we can recommend that the Commission commit to specific schedules. Additional comments address the timing of the preliminary determination of site suitability, the need for additional information on the two-stage construction plan, planned activities during the site characterization phase, and other subjects.

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One of the matters requiring our attention is timely issue resolution. We commented previously on this in our July 31, 1984, comments on the Draft Mission Plan. We are considering issue resolution through rulemaking in advance of the hearings required by 10 CFR 60. If such resolution is planned, it may be appropriate in future modifications to the PDS, to include milestones for the resolution of identified issues. We will be discussing this approach to issue resolution with your staff.

efforts to identify some of the issues appropriate for such resolution. Formal generic resolution will facilitate the closing out and narrowing of issues and consequently help avoid delays in the license process.

It may be appropriate to include specific milestones in the Project Decision Schedule for issues we intend to pursue through formal resolution when they are identified. We also recommend that DOE identify licensing issues that it would propose for formal resolution, and discuss them with NRC promptly. As these issues are identified, DOE should add milestones for their resolution to the Project Decision Schedule or its updates. Please refer to our July 31, 1984 comments on the Draft Mission Plan for further discussion of issue resolution (Enclosure 3 of Mission Plan comments, p. 5).

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Sincerely,

John G. Davis, Director
Office of Nuclear Material Safety
and Safeguards

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