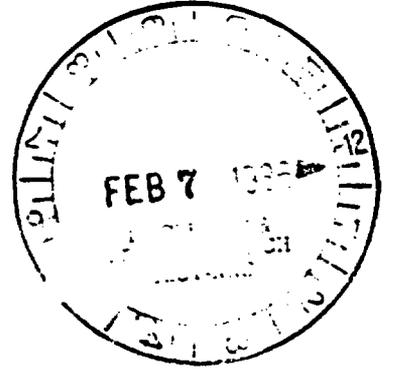


AGENCY NUMBER
PROCEEDING NUMBER **PR-60**
(50 FR 2579)



TESTIMONY OF
GREGG S. LARSON
DIRECTOR
HIGH-LEVEL RADIOACTIVE WASTE PROGRAM
STATE OF MINNESOTA
BEFORE
U.S. NUCLEAR REGULATORY COMMISSION
JANUARY 24, 1986

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Mr. Chairman and Members of the Commission:

I am Gregg Larson, Director of the High-Level Radioactive Waste Program for the State of Minnesota. Minnesota is grateful for this final opportunity to testify today on the Commission's proposed procedural amendments to 10 CFR 60. We hope that you will once again consider our views and recognize the special importance of your regulatory role in this repository siting process.

I wish to note, for the record, that the State of Minnesota submitted comments in this rulemaking on March 17, 1985. Our comments, and those of other states, have not been favorably addressed by the staff. Rather than restate those comments, I want to highlight some fundamental issues that are basic to this rulemaking.

The first issue concerns the authority of the Commission to review DOE siting decisions. In examining the staff position, it is clear to us that the staff continues to interpret Congressional silence with regard to existing 10 CFR 60 site selection review responsibilities as Congressional rejection of those responsibilities. Although the Nuclear Waste Policy Act (NWPA) does not specifically identify site selection criteria in the list of items that constitute a Site Characterization Plan (SCP), it does provide the Commission with the authority to request any other

information that it deems necessary (Section 113, (b)(1)(A)(v)).

Even if this were not the case, the NWPA does not, in itself, define the breadth of Commission authority in repository siting and licensing matters. The staff has neglected other underlying statutory authority, most notably the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974. Both assign the Commission broad health, safety, environmental, and licensing responsibilities sufficient to serve as a basis for formal review of the DOE's site selection process prior to the final choice of a site. In addition, the Commission has site selection review authority under the National Environmental Policy Act (NEPA).

This narrow interpretation is neither persuasive nor wise. The Commission must be willing to play a central role in the comparative analysis of sites and must consider not just the final site proposed for licensing, but also the range of choices that were available at each of the decision points in the site selection process. By relegating the entire siting process to the DOE, the Commission unnecessarily surrenders its basic oversight authority, ignores its NEPA responsibility, and risks the consequences of a flawed process and Environmental Impact Statement. Given the historical record of mismanaged and inept siting efforts, that risk is substantial.

The second issue concerns the perception of the staff that the states and tribes have the resources and expertise sufficient for participation in the siting program at a level equivalent with the Commission and the DOE. The fact that the NWPA guarantees public participation, that frequent technical meetings in Washington are open to the public and interested parties, and a NRC/DOE procedural agreement has been signed should not serve as a convenient excuse for the elimination of formal mechanisms for public involvement in the Commission's work. These mechanisms are most often the focus of public attention. There is a significant difference in the type of notice, the information distribution, and the response requirements between informal NRC/DOE technical meetings in Washington and the formal review that would accompany release of an NRC Site Characterization Analysis.

The Commission's experience with concurrence on the siting guidelines should have demonstrated that, even when opportunities for public participation are numerous, there is no certainty that the responsible agency will be responsive. The Commission's unique role as a regulator provides a status different from that of the states and tribes. It was only after the Commission actively sought change in the guidelines that the DOE began to respond.

The repository siting schedule again appears to be more important than procedural and institutional aspects of the program. While the DOE abandons the schedule at will, the Commission staff imply that a 90 day public comment period could hinder DOE compliance with NWPA

deadlines. It is unfortunate that "catch-up" on the schedule must come at the expense of state, tribal, and interested public involvement in the process.

And we do not agree with the staff that the public comment period is not needed because the Commission will be fully aware of all the relevant issues and concerns. Not only is this an arrogant assumption, but it ignores the importance of public gain through access to Commission information, expertise, and conclusions.

Furthermore, the expectation that the states, tribes, and public would formally review the Commission's draft Site Characterization Analysis would contribute to a more rigorous analysis by the Commission. It also will lend some semblance of Commission independence to what often looks like a cooperative venture between a regulator and the future license applicant. Rather than discourage such public interaction, the Commission should welcome the mutually beneficial effects that would accompany formal public review and comment on a draft Site Characterization Analysis, as contemplated in the existing rules.

The third issue concerns the timing of shaft construction and the need for a prohibition on such construction until after the Commission, states, and tribes have reviewed the SCP and DOE has considered the comments. Because the staff endorses the view that construction must await DOE consideration of the comments on the SCP, we are puzzled by the reluctance to state this in the proposed

amendments. Despite the DOE Mission Plan agreement that sufficient time must elapse for review of the SCP, there are numerous examples of DOE proposed short-cuts, such as limited work authorizations and premature determinations of site suitability, some of which reversed previous DOE positions. We do not share the Commission's confidence that the DOE commitment will be adhered to in the face of schedule delays. Our cynicism is reinforced by the Commission and the DOE desire to avoid even a 90 day review period for the Site Characterization Analysis.

Finally, the staff questions the need for a declaration of an absolute right to participate in the licensing proceedings of the Commission. While we would like to believe that our concern is unwarranted with respect to this issue, the Commission's action on the question of preliminary determination of site suitability, the recent decision to hold unrecorded gatherings without soliciting public comment, and the staff proposal to alter the Commission's rules of practice for licensing proceedings lead us to the conclusion that such a declaration is necessary.

We understand that minor changes may be necessary to ensure 10 CFR 60 conformance with the NHPA, but the proposed procedural amendments go beyond what is required. We urge that they be reconsidered.

Thank you.