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MEMORANDUM FOR: Robert E. Browning
Division of Waste Management
Office of Nuclear Material Safety & Safeguards

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

SUBJECT: DRAFT SITE CHARACTERIZATION ANALYSIS ON THE BWIP SCR

The following comments are forwarded in response to your memorandum of February 8, 1983 on the captioned subject.

1. Page C-1. In addition to the identified "central question," there is a second fundamental concern to be addressed in our review: will site characterization activities adversely affect the site? Also, the text of the SCA may be inadequate in its treatment of this topic.
2. Page C-1. The "two basic questions" -- besides being three -- are not "basic." The basic questions are those dealing with information to be obtained and with adverse, safety-related, effects on the site.
3. Page C-3. There is no EPA standard (except in proposed form), so it cannot be concluded, by DOE or anyone else, that the EPA standard would be satisfied. More generally, the many references to the EPA standard and NRC rules appear to be inconsistent and confusing. Perhaps the various documents should be reproduced in the SCA, with all references accurately keyed to the proper version.
4. Page C-11. Delete the portion of the first paragraph on Item 11. beginning "that will be of concern." With or without agreement, the program can be well targeted. More important, we should be concerned with the adequacy of performance assessment to meet our licensing needs, whether or not others are satisfied.
5. Page C-12. The followup plans are important. Keep in mind that in a licensing proceeding any issue raised in the SCA is likely to be grounds for litigation. The staff will be asked how it has resolved each of its concerns, and a systematic followup system will be helpful in enabling the staff to address all the issues and to prepare appropriate responses.
6. Page 1-2. The discussion of other statutory interfaces between NRC and DOE is misleading. Per conversations, with Mr. Miller, we recommend combining the

first two full paragraphs -- retaining only the first sentence of the first paragraph and the last sentence of the second paragraph.

In the third paragraph: (1) delete "therefore" and (2) revise the second sentence to read "By identifying these concerns in a timely manner, they can be resolved in an orderly way that will contribute to the completion of license reviews according to the schedules specified by law."

7. Page 8-1. The following revised language is proposed:

As noted in Chapter 1, new legislation has been enacted since DOE submitted the SCR on November 12, 1982. The legislation, the Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 42 USC 10101, now addresses site-selection and environmental factors (i.e., NEPA issues) through procedures outside the site characterization program. Thus, in contrast to the NRC regulatory approach, under which a site characterization report was to discuss the method by which the site was selected for site characterization, the Waste Act provides that this information is to be included in an environmental assessment prepared by DOE which is subject to public review in accordance with other specified procedures. The site characterization plan which is to be submitted for NRC review under the Waste Act is concerned with activities proposed to be conducted at the site and not with the site selection process. In the light of the new statutory direction, this draft site characterization analysis will not consider site-selection and environmental factors that lack safety significance.

The staff observes that under the Waste Act the Commission retains responsibilities under the National Environmental Policy Act. However, pursuant to the new law, any environmental impact statement prepared in connection with a repository proposed to be constructed by DOE will, to the extent practicable, be adopted by the Commission in connection with the issuance of a construction authorization and license. Accordingly, the omission of a treatment of NEPA issues in this document is not intended to imply that they will not be considered in other contexts as provided by law.

8. Page 9-1. The relationship of "performance assessment" (Chapter 9) to "performance confirmation" (described in Part 60) is unclear. The appropriate question is whether DOE has designed a performance confirmation program that is appropriate; if that is the question, then Chapter 9 is inadequate. If the objective of Chapter 9 is something else, then the analysis needs to explain how performance confirmation plans are being evaluated.

See Comment 1. relative to the "central question."

Performance assessment does not assure conformance with numerical criteria; it may, however, assess conformance.

9. Page 9-2. The judgments that are critical in this context are policy judgments; although they must be made in the light of the Commission's expertise, it is misleading to characterize them as "expert judgments."

The use of probabilistic assessment needs to be explained in terms that more closely parallel the staff's recommendations to the Commission in connection with Part 60.

If the staff wishes to complete determination (2) prior to initiation of licensing proceedings, it will be necessary to carry out rulemaking to accomplish this objective. The objective seems reasonable and achievable, but it will be necessary to scope out the task and determine schedules, resources, etc. that may be required.

10. Page 9-3. Definitions should conform to 10 CFR Part 60.
11. Page 9-5. See prior comments (4 and 9) regarding consensus and agreement and expert judgment.

Additionally, the statement about "compliance with the numerical criteria" implies that these criteria are less flexible than is the case. The issue should be stated, instead, in terms of whether the techniques are appropriate to the approval or specification of numerical criteria that would be used for purposes of licensing.

12. Page 9-6. See prior comments regarding consensus and agreement.
13. Page 11-1. I see no reference to any DOE plans for evaluating natural resources at the site, the exploitation of which could affect the ability of the site to isolate radioactive wastes.
14. Appendix C. Definitions should conform to 10 CFR Part 60 (and the version of Part 60 being referred to should, here as elsewhere, be stated explicitly). Environmental issues should be eliminated. (See Comment 7, above.) In Figure C-1, the cross-section should depict the limit of the engineered barrier system.

15. Appendix T, Section 1.2.1.3. The EPA is responsible for establishing generally applicable environmental standards for the protection of the general environment from radioactive material. The text should be revised accordingly.



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