



July 26, 1985

POLICY ISSUE
(Information)

SECY-85-258

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: THE STATUS OF ACTIVITIES UNDER THE NUCLEAR WASTE POLICY ACT OF 1982 (NWPA) AND OF DOE'S PLANS FOR THE FUTURE

Purpose: To provide the Commissioners with background information in preparation for a meeting with the Director of DOE's Office of Civilian Radioactive Waste Management on July 29, 1985.

Background: Mr. Bernard C. Rusche last met with the Commission on November 15, 1984. For that meeting the staff provided background information on the status of Federal NWPA actions (SECY-84-425), which has been updated for this meeting and appears in Enclosure 1.

Discussion: The purpose of the meeting is to be briefed by DOE's waste office director on his current thinking on the national high level waste program. In particular, the briefing is expected to focus on high level waste rulemakings; the Mission Plan (NWPA Section 301) that DOE sent to Congress on July 9, 1985; and on the Draft Project Decision Schedule [NWPA Section 114(e)] which has been submitted to NRC for comment by September 13, 1985.

High Level Waste Rulemaking

The NRC has undertaken several rulemakings to implement the Nuclear Waste Policy Act of 1982:

1. Revise 10 CFR Part 60 (HLW disposal in geologic repositories):

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- Change the procedures to conform with NWPA site selection and characterization procedures, to clarify the Commission's review responsibilities, and to change procedures for interactions with States and Tribes.
 - Conform (as necessary) to EPA standards for protection of the general environment from off-site releases from radioactive material in repositories.
2. Review the definition of HLW in light of the NWPA definition.
 3. Revise 10 CFR Part 51 (Environmental Protection) to establish the procedures to implement the Commission's NEPA responsibilities for the licensing of a geologic repository, including the mechanism by which the NRC will adopt the DOE EIS, as provided for by the NWPA.

The Mission Plan

Section 301 of the Nuclear Waste Policy Act of 1982 directs the Secretary of the Department of Energy to prepare a comprehensive report, to be known as the Mission Plan, which shall provide an informational basis sufficient to permit informed decisions to be made in carrying out the repository program, and the research, development, and demonstration programs required under the Act. The Act further requires that the Secretary submit a draft Mission Plan to the States, the affected Indian Tribes, the Commission, and other Government agencies as the Secretary deems appropriate for their comments.

The NRC staff have reviewed two drafts of the Mission Plan and provided comments to DOE (See SECY-84-17; SECY-84-87; SECY-84-87A; and SECY-84-270). Our last set of comments were transmitted by Chairman Palladino on July 31, 1984. On Tuesday, July 9, 1985, the DOE delivered the Mission Plan to Congress. The staff is now reviewing this Mission Plan to assess DOE's responsiveness to our objections and comments, and to identify programmatic changes that DOE has made since the Draft Mission Plan. Each of these changes is being assessed to determine the impact it has on NRC's program and resource requirements. As the Mission Plan identifies in some detail the program needed to meet the Project Decision Schedule, our comments will also feed

back into the schedules that NRC will be signing up to in that document.

A copy of the Mission Plan has been provided to each Commissioner's Office.

The Act required that Federal Government agencies "shall specify with precision any objections that they may have" on the Draft Mission Plan. The Act further stated that "if the Secretary does not revise the Mission Plan to meet objections specified in such comments, the Secretary shall publish in the Federal Register a detailed statement for not so revising the Mission Plan." The NRC was the only Government agency to specify objections in their comments to the Draft Mission Plan. The Department's response to all the NRC objections and the corresponding changes made in the Mission Plan were published in the Federal Register on Friday, July 12, 1985 (50 FR 28446).

DOE did not revise the Mission Plan to meet the NRC objection concerning the timing of the preliminary determination, [NWPA Section 114(f)]. DOE's detailed statement for not so revising the Mission Plan appears in Enclosure 2. In anticipation of DOE so modifying its position on the timing of the preliminary determination, the staff notified the Commission of the potential impacts of this course of action, identified alternatives for Commission consideration, and requested Commission guidance on how to proceed (SECY-85-237, July 5, 1985). Since the Mission Plan contained additional information on this matter that was not available to the staff when SECY-85-237 was prepared, the staff is providing the Commission with additional information (Enclosure 3) which supplements the information recently provided in SECY-85-237. This includes discussion of the option of making the preliminary finding after completing at least a portion of site characterization, as opposed to before any site characterization occurs.

The staff's review of the Mission Plan will continue for several weeks. The results of its preliminary review to date may be summarized as follows:

1. DOE appears to be making progress in developing and implementing a quality assurance program.

2. DOE has set extremely ambitious schedules for its reference program and it acknowledges them as such. It will require that a detailed set of milestones be established for the staff and DOE to work out major licensing issues well in advance of key events (such as certain issues related to exploratory shaft construction before receipt and staff review of site characterization plans which is where nominally these issues would be addressed).
3. Descriptions of sites being investigated, technical program status and plans are general in nature as would seem appropriate for the Mission Plan. Frequent references are made to other DOE documents, such as the recent draft Environmental Assessments (EA's), for details. However, the staff found in many instances the draft EA's are overly optimistic and did not take a conservative approach in the assessment of sites. There is some concern, therefore, that DOE's technical approach should be more conservative with respect to treatment of uncertainties needing to be investigated, if there is to be confidence in DOE's ability to meet its ambitious reference schedule.
4. DOE's responses to many of our comments and objections look encouraging, however the final proof of DOE's commitment will have to await presentation of details in the final EA's and site characterization plans and its actions in the laboratory and field.

There are two major programmatic changes between the draft Mission Plan and the version submitted to Congress:

1. The reference schedule for NRC's licensing review leading to repository construction has been reduced from 36 months to 27 months, and
2. the MRS is being considered as an integral part of DOE's reference program.

The Mission Plan's discussion of NRC's license review period implies that NRC has stated that some review period less than 36 months can be achieved. This is not the case. The staff has consistently said that the NRC's primary concern is safety and doing the job right. The staff has stated that NRC is committed to making the licensing review as efficient as possible and believes that three years is a very optimistic estimate for the

time required to reach a licensing decision on repository construction. This estimate is dependent on a free and open exchange between DOE and the NRC to establish the information that will be needed for the license application, and that the NRC be kept abreast of information and data as it is developed at sites being characterized. The activities described in the Mission Plan as a basis for the shortened licensing schedule estimates are essentially what was assumed in the initial 36 month schedule. The staff has not yet identified any way in which the license review period can be reduced from its original 36 month estimate, nor has it yet observed any actions by DOE that lead it to believe that something less than 36 months will be achievable. Enclosure 4 summarizes the basis for the 36 month licensing schedule.

We understand that DOE officials arrived at a 27 month NRC licensing review time, at least in part, based upon what they understand occurred in the Clinch River Breeder Reactor licensing proceeding. We have reviewed that experience; we believe it supports the conclusion that the 36 month licensing schedule is very tight. We believe it does not support DOE's contention that 27 months is a reasonable timeframe for repository licensing. Enclosure 4 also provides a summary of this issue.

DOE is now evaluating plans to include the monitored retrievable storage facility as an integral element of their preferred high level waste management system. NRC staff have been carefully observing and reviewing DOE's development of this strategy. We are not in disagreement with this approach at this time.

The Project Decision Schedule

Section 114(e) of the Nuclear Waste Policy Act of 1982 directs the Secretary of the Department of Energy to prepare, and update, as appropriate, in cooperation with all affected Federal agencies, a Project Decision Schedule (PDS) that portrays the optimum way to attain the operation of the repository, within the time periods specified in Subtitle A of the Act. The PDS is to include a description of objectives, and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start or completion of such activities will cause a delay in beginning repository operation.

The NRC staff reviewed a preliminary draft of the Project Decision Schedule and transmitted their comments to DOE on March 4, 1985 (SECY-85-40A). On July 18, 1985, the staff received the Draft Project Decision Schedule from DOE, for comment by September 13, 1985. DOE is now targeting to publish the effective PDS in November, 1985. If the NRC determines that it cannot comply, or fails to comply, with any deadline in the PDS, NWPA Section 114(e)(2) specifies a series of actions that the Agency Head must take (See Enclosure 5 for details).

To assist in providing a timely response to this draft PDS, the staff solicited the Commission's guidance on which NWPA events it wished to get involved with, the nature of the Commissioners' desired participation, and the duration of their action (See SECY-85-40). This guidance was received on July 9, 1985. The Commission modifications to the staff's proposal are being added to the planned staff times, and will be reflected in the staff's comments on the draft PDS. These comments will be sent to the Commission in mid-to-late August, for approval and transmittal to DOE.

A copy of the Draft Project Decision Schedule has been sent to each Commissioner's Office.

The schedules and program assumptions in the draft PDS are identical to those in the Mission Plan. The major issues and changes that we can identify now for the Commission to address in the draft PDS will be:

Issues:

1. The shortening of the 3 year license review period to 27 months, and
2. DOE's new position on the timing of the preliminary determination. [NWPA Section 114(f)].

Changes:

1. Schedule changes to incorporate Commissioner's guidance received July 9 (in response to SECY-85-40).
2. Schedule changes to incorporate lead times for state and tribal participation in response to PPG p. 18, #2.

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The staff is now developing its proposed comments on these and other areas covered by the draft PDS.

Schedule: Mr. Rusche is currently scheduled to meet with the Commission on July 29, 1985, at 2 p.m.

William J. Dircks
Executive Director for Operations

Enclosures:

1. Federal NHPA Actions
2. DOE's Detailed Statement for not
Revising the Mission Plan
3. Additional Information on
SECY-85-237
4. Basis for 36-month Licensing
Schedule
5. NHPA Section 114(e)(2)

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ENCLOSURE 1

BACKGROUND PAPER ON FEDERAL
NWA ACTIONS**I. Actions Taken to Date**

1. Section 112(a)- DOE published final repository siting guidelines on December 6, 1984. On December 24, 1984, the staff recommended to the Commission (SECY-84-482) that the Commission does not have to concur in the supplementary information to guidelines. The Commission approved this recommendation.
2. Section 121(b)- NRC's technical requirements and criteria for licensing a high-level waste repository were published in the Federal Register on June 21, 1983. (SECY-83-598, April 11, 1983)
3. Section 134- A final rule establishing procedures for expansion of on-site spent fuel storage capacity or transshipment of fuel was submitted to the Commission July 8, 1985. (SECY-85-235)
4. Section 135(g)- Final criteria (10 CFR Part 53) for determining the adequacy of available spent fuel storage capacity were published by NRC on February 11, 1985.
5. Section 223(b)- NRC and DOE published a joint notice in the Federal Register on March 30, 1983 offering technical assistance to non-nuclear weapon states in the field of spent fuel storage and disposal. The first annual update of the notice was published on April 6, 1984. The second annual update was published on April 5, 1985.
6. Sections 301(b) and 216(a)- DOE submitted the Final Mission Plan to Congress on July 9, 1985.
7. Section 302- The final waste disposal contract was published by DOE in the Federal Register on April 18, 1983. All necessary contracts were signed and received by DOE by June 30, 1983.
8. Section 8- DOE submitted a final report to the President in February, 1985 recommending a combined commercial and defense repository. The President concurred with these recommendations on April 30, 1985.
9. Section 303- DOE's Advisory Panel on Alternative Means of Financing and Managing Radioactive Waste Facilities submitted the Final Draft Report to the Chairman February 19, 1985. The Final Draft Report and comments were submitted to DOE and the President 4/18/85.
10. Section 306- The Commission published proposed amendments dealing with simulator training requirements (11/26/84) and issued a policy statement on training and qualification requirements of plant personnel on 2/7/85. This statement was published in FR 3/20/85.

II. Actions in Progress

1. Section 114(e)- DOE provided the draft Project Decision Schedule for NRC comment on July 18, 1985.
2. Section 121- EPA's final high-level waste standards are completing development and are expected in August 1985. NRC will review its high-level waste criteria for conformance after the final standards are published. (See SECY-84-320, August 9, 1984)

III. Future Actions

1. Section 112(b)- DOE is expected to nominate at least five sites for characterization in November, 1985. Each site nominated will be accompanied by an Environmental Assessment.
2. Section 112(b)- DOE is expected to recommend 3 sites for characterization for the first repository to the President in November 1985.
3. Section 113(b)- DOE is expected to issue site characterization plans for BWIP and NNWSI in March 1986 and SALT in October, 1986.
4. Section 114(a)(1)(d)- DOE's schedule is to issue a Final EIS on recommendation of a site for development as a geologic repository in the first half of 1990.
5. Section 141- DOE plans to submit the Draft MRS proposal to the NRC on 12/2/85, and the Final to Congress by January 15, 1986. NRC's comments on the proposal must be submitted by DOE to Congress.
6. Section 217(f)- DOE reported to Congress on April 6, 1984 that the decision on the need for a Test and Evaluation Facility was being delayed until late 1987, when the program's data needs are better established. A written agreement between NRC and DOE on procedures for the TEF would then be developed if DOE decides to construct the facility.

NRC OBJECTION 5

Statement of Objection

"The Mission Plan should be revised to reflect the recent agreement between DOE and the Commission on the timing of the preliminary determination under Section 114(f) of NWSA."

"At the June 22, 1984 Commission meeting on the Commission's concurrence decision on the DOE siting guidelines, the Commission and DOE agreed that the preliminary decision required by Section 114(f) of the NWSA should be made after the completion of site characterization and not at the time of site recommendation for characterization. The Mission Plan should be revised accordingly to reflect this agreement."

Response

Section 114(f) of the Act provides that the environmental impact statement (EIS) for the first repository is to consider as alternative sites those sites with respect to which "(1) site characterization has been completed under section 113; and (2) the Secretary has made a preliminary determination that such sites are suitable for development as repositories consistent with the guidelines promulgated under section 112(a)." The Act does not specify when in the siting process the "preliminary determination" is to be made, but by specifying that this determination by the Secretary was to be preliminary, the Act recognized the possibility of a site's subsequently being found by the Secretary to be unsuitable.

At the June 22, 1984, Commission meeting on the Commission's concurrence decision on the DOE siting guidelines, the DOE agreed to delete language from Section 960.3-2-3 of the guidelines related to the timing of the preliminary determination required under Section 114(f) of the Act and instead to specify that timing in the Mission Plan. Therefore, in accordance with that agreement, Section 3.1 of Part I in the Mission Plan specifies the timing of the preliminary determination. It says that the preliminary determination is to be made at the time the Secretary recommends three sites to the President for site characterization.

While discussions in that meeting may have indicated a further agreement relative to the timing of the preliminary determination, the DOE has concluded that a preliminary determination made after site characterization, as suggested in the Commission's objection, would have the effect of requiring that three sites be found suitable at the end of site characterization. At the June 22 meeting the DOE made clear its understanding that three suitable sites were not required at the end of site characterization. Requiring three suitable sites at the end of site characterization would necessitate the DOE's characterizing more than three sites or accepting the risk of large schedule and cost uncertainties should one of the initial three sites be found unsuitable. The Act does not require that more than three sites be characterized, but rather anticipates that the repository site would be selected from among the three characterized and that the repository would be developed in a timely fashion.

The purpose of the preliminary determination is to ensure the reasonableness of the alternative sites considered. Although other points in

the siting process were considered, the DCE has concluded that the above purpose is served by having the preliminary determination made at the time of recommendation. This timing is both reasonable and in compliance with the Act.

The Secretary will have at that time the evaluation to support a preliminary determination for each of the three recommended sites. Under Section 112(b)(1)(E), the environmental assessments that accompany site nominations are to include, among other things, both (1) an evaluation as to whether the site is suitable for site characterization and (2) an evaluation as to whether the site is suitable for development as a repository. Each of these evaluations is to be based on the guidelines promulgated under Section 112(a). At the time of nomination, the Secretary will use the first evaluation to support the required finding that the nominated sites are suitable for characterization. Subsequently, at the time of recommendation, he will be able to use the second evaluation and any other available information to make the "preliminary determination" referred to in Section 114(f) that the sites are suitable for development as repositories.

SUPPLEMENTAL INFORMATION ON THE
TIMING OF DOE'S PRELIMINARY DETERMINATION UNDER
SECTION 114(f) OF NHPA

The information presented below is provided to the Commission to supplement information previously provided by the staff in SECY-85-237. The Mission Plan presented additional information on how DOE intends to make its preliminary determination that is required by Section 114(f) of the NHPA. This information was not available when the staff prepared SECY-85-237.

Timing Of The Preliminary Determination

In responding to NRC Objection 5 (Mission Plan, Volume II, p. 25), the DOE stated that at the June 22, 1984 meeting with the Commission, it "agreed to delete language from Section 3-2-3 of the guidelines related to the timing of the preliminary determination required under Section 114(f) of the Act and instead to specify that timing in the Mission Plan." (Emphasis added). This view is at odds with the Commission's understanding of the discussion at the June 22 meeting. The Commission directed the staff to add the following statement to the Commission's final concurrence decision on the siting guidelines: "The Commission and DOE agree that the preliminary determination required by Section 114(f) of the NHPA should be made after the completion of site characterization and not at the time of site nomination and recommendation." (Memorandum from Samuel J. Chilk to William J. Dircks dated June 28, 1984). Thus, DOE is indicating in the Mission Plan that it understood the decision at the June 22 meeting to indicate that it would decide on the timing of the preliminary determination at a later date while the Commission's understanding was that it had agreement with DOE on the timing of the determination. It should be noted that in the Supplementary Information on the Final Guidelines (49 FR 47727, December 6, 1984), DOE simply stated that the preliminary determination was outside the scope of the guidelines and was therefore deleted from the final guidelines. DOE did not mention the timing of the preliminary determination in the Supplementary Information.

Technical Basis For The Preliminary Determination

A second point on this matter relates to the statement made by DOE in the Mission Plan that:

"Under Section 112(b)(1)(E), the environmental assessments that accompany site nominations are to include, among other things, both (1) an evaluation as to whether the site is suitable for site characterization and (2) an evaluation as to whether the site is suitable for development

Option Of Making Preliminary Determination During Site Characterization

There is one additional point that the Commission should be aware of regarding the question of preliminary determination. This is that an alternative to making the determination before site characterization begins or after it is complete, is to make the determination upon completion of one of the distinct phases that will make up site characterization. Site characterization will consist of a sequence of discrete activities, each of which will produce significant information about the sites beyond what will be in hand at the beginning of site characterization. These phases will differ to some degree among sites but they would include such things as large scale hydrologic pump testing, exploratory shaft construction, and visual observations in excavated openings (before actual testing begins). DOE could select the completion of one of these interim site characterization phases to make its preliminary determination. Significant additional information on geologic related site features which are important to the primary function of the repository -- long term waste isolation -- would be in hand. DOE would have to make the cost-benefit/risk decision in deciding which point would be most appropriate. This approach would be consistent with what the ELD described in its July 31, 1984 memorandum on this issue (Enclosure 7 to SECY-85-237).

REPOSITORY LICENSING SCHEDULES

Background on Current Schedule of NWPA

The NWPA requires the NRC to reach a final decision on the issuance of a construction authorization within three years after DOE submits a license application. It provides for a one year extension in this review if the Commission complies with the reporting requirements in Section 114(e)(2). The basis of the NWPA schedule requirements was a letter from the staff to DOE (letter to F. E. Coffman from J. B. Martin of May 12, 1982, attached) which was also provided to the Congressional Committees developing the waste legislation. The estimated time for licensing in the letter was three and one-half years, with the statement that, if the Commission was authorized to adopt DOE's environmental impact statement, this time could be reduced somewhat. The final versions of the draft legislation upon which the Commission testified reduced the nominal licensing time to three years (because it provided such authorization) and Chairman Palladino testified that the proposed licensing schedules were "tight yet reasonable." The Commission testimony and the staff's letter incorporated several very important assumptions about these schedules:

1. The DOE would provide a high quality and complete license application. All technical work and testing needed to make findings against 10 CFR 60 would be completed.
2. There is a free and open exchange between DOE and NRC to establish what information will be needed for the license application and that the NRC will be kept abreast of information and data as it is developed at sites being characterized.

The staff estimates were based upon experience in other Commission licensing cases. While this included consideration of reactor licensing cases, the staff assumed that the lesson learned from the problems which resulted in delays in reactor licensing cases would be factored into the site characterization and repository licensing process. We used this experience to determine what the licensing review and hearing process, in its most efficient and expeditious form, would require. In short, the staff assumed that there would be no significant unexpected problems in either the staff's licensing review or hearing portions of the licensing process.

Clinch River Breeder Reactor (CRBR) Licensing Experience

In the Mission Plan, DOE assumes that the NRC will be able to complete its licensing review process in only 27 months. We understand that, at least in part, DOE officials are basing this assumption on what they understand about CRBR licensing experience. Specifically, we understand that they are focusing only on the final phase of CRBR licensing -- that is, the time it took to proceed from NRC's reactivating its licensing review in September, 1981 to the time that the licensing board issued its findings and conclusions in January, 1984, a period of 27 months. While there are some similarities between CRBR and the repository, focusing on only the final phase of CRBR licensing is misleading.

1. NRC licensing review formally began in April of 1975. While the NRC licensing review was suspended in April 1977, the staff had already completed significant portions of the review. Also, during the time that formal licensing proceedings were suspended, DOE continued to work on CRBR and, specifically, on issues raised by the staff.
2. CRBR benefited enormously from the experience gained in DOE's prior development and staff review of the Fast Flux Test Facility (FFTF) which was similar in many ways to the liquid metal fast breeder reactor (LMFBR) technology of CRBR. The FFTF program started in the 1960s and formal regulatory staff review began in 1970. During this time much of the LMFBR design philosophy (later adopted by CRBR) was reviewed by the staff and ACRS. The final phase of licensing, in particular, benefited from FFTF experience, since the FFTF was already constructed and operating.
3. Intervention was limited compared to what can be expected in the repository case, particularly given the funding provided to States and Tribes under NHPA and the number of national public interest groups already involved. In fact, by the time the CRBR hearings on safety issues were held in July, 1983, intervenors had withdrawn from the construction permit proceedings.
4. CRBR licensing did not include a final Commission review as will be required in the repository licensing case.

Therefore, staff considers that focusing on just the final phase of CRBR licensing in estimating review times for the repository is very misleading. It is true that there will be extensive prelicensing consultation between DOE and NRC staffs while DOE is exploring sites and gathering data during site characterization, but this is already assumed in the 36 month schedule.

It is also true that the Commission will actually be providing comments on DOE's selection of the proposed repository site prior to receiving the license application [comments on DOE's EIS, comments on the sufficiency of site characterization work (NHPA Section 114(a)(1)(E)), and comments to the Congress in any "state veto" proceedings (NHPA Section 115(g))], but the NHPA clearly recognizes that these would be preliminary comments. For example, it states that comments to Congress on the "state veto" should not be "construed as binding the Commission" with respect to its licensing decisions [NHPA Section 115(g)]. As the DOE Mission Plan recognizes, the level of information, analysis and findings that will be necessary and possible in the site selection process (EIS) will be less than what will be necessary to make the kind of final conclusions about public health and safety of a site required in adjudicatory licensing proceedings. Therefore, the 36 month schedule appears as tight now as it did when first estimated.

MAY 12 1982

Dr. Franklin E. Coffman
Deputy Assistant Secretary
for Nuclear Waste Management
and Fuel Cycle Programs
U.S. Department of Energy
Washington, DC 20545

Dear Dr. Coffman:

This is in response to the letter from Wade Ballard dated March 22, 1982 requesting estimates of licensing schedules for the first repository. Attached is our current best estimate of the times it will take to conduct each of the steps in the review of the construction authorization application and associated hearings. This is essentially the schedule that was reviewed in a meeting between our staffs on April 19, 1982.

The total estimated time for licensing is three and one-half years. If legislation pending in the Congress (S.1662) passes with the provisions for NRC use, to the extent possible, of DOE NEPA assessments (Section 405(f)(3)) and the DOE does a good job in these assessments, we will be able to reduce this time. We can substantially eliminate the activities shown in the attached sheet under environmental review. With this and the ability to direct freed resources to the safety review, we estimate we may be able to reduce the time of licensing somewhat.


There are several very important assumptions supporting these estimates. First, a high quality and complete license application is assumed. The schedules are based on DOE having completed all of the technical work and testing needed to make the findings required in 10 CFR 60.31. However, as I indicated in my recent letter of April 15, 1982, we are concerned about whether your current plans for underground testing and site characterization will be adequate to result in a complete application.

The second assumption is that there will be a free and open exchange between the DOE and NRC to establish what information will be needed for the license application and that the NRC will be kept abreast of information and data as it is developed at sites being characterized. This is the kind of consultation called for by S.1662 (Section 404 (c)). In light of recent difficulties in scheduling discussions at the BWIP

project, we are not confident on this point. For example, since the end of January, we have attempted to followup, within constraints posed by your program responsibilities, on a BWIP project proposal for a series of meetings and workshops on selected, important site issues. Despite many meetings and discussions with DOE headquarters, no progress was made until our meeting on April 27, 1982 when we were given for the first time, a proposed agenda for a meeting during the last week of May. Since then, even these plans have been put off. Because starting such interactions soon is so important to schedule, I think it is essential that we both give this matter our personal support and attention.

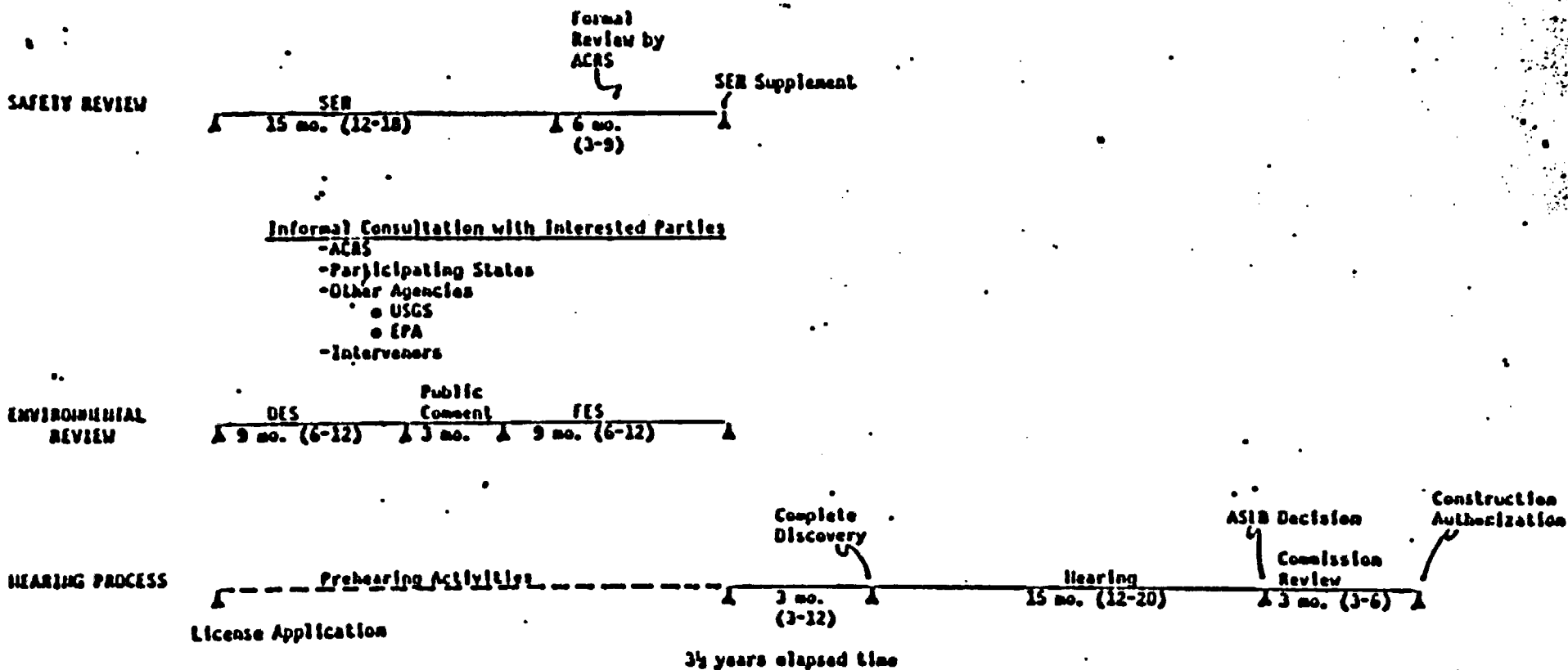
Any use of this schedule by the DOE in its planning must include statement of the above assumptions. Until such time as our concerns are resolved, we are not sanguine about the prospects for the sort of orderly licensing proceedings that are depicted in the attached schedules.

Sincerely,

Original Signed by
John B. Martin 
John B. Martin, Director
Division of Waste Management

Enclosure

SCHEDULE ESTIMATES FOR HLW REPOSITORY LICENSING



FOOTNOTES

- 1: A high quality and complete license application is assumed. All technical work and testing needed to make the finding required in 10 CFR 60.31 are assumed complete.
- 2: A free and open exchange between the DOE and NRC to establish what information will be needed for the license application and that the NRC will be kept abreast of information and data as it is developed at sites being characterized is assumed.
- 3: Uncertainties in times are shown in parentheses. Greatest uncertainties are associated with the hearing process.

the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 116(c)(2)(D) by the State in which such site is located, or under section 118(b)(3)(D) by the affected Indian tribe where such site is located, as the case may be

(2)(A) Not later than March 31, 1987, the President shall submit to the Congress a recommendation of one site from the three sites initially characterized that the President considers qualified for application for a construction authorization for a repository. Not later than March 31, 1990, the President shall submit to the Congress a recommendation of a second site from any sites already characterized that the President considers qualified for a construction authorization for a second repository. The President shall submit with such recommendation a copy of the report for such site prepared by the Secretary under paragraph (1). After submission of the second such recommendation, the President may submit to the Congress recommendations for other sites, in accordance with the provisions of this subtitle.

(B) The President may extend the deadlines described in subparagraph (A) by not more than 12 months if, before March 31, 1986, for the first site, and March 31, 1989, for the second site, (i) the President determines that such extension is necessary; and (ii) transmits to the Congress a report setting forth the reasons for such extension.

(C) If approval of any such site recommendation does not take effect as a result of a disapproval by the Governor or legislature of a State under section 116 or the governing body of an affected Indian tribe under section 118, the President shall submit to the Congress, not later than 1 year after the disapproval of such recommendation, a recommendation of another site for the first or subsequent repository.

(4)(A) The President may not recommend the approval of any site under this subsection unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a report for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4322(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) **SUBMISSION OF APPLICATION.**—If the President recommends to the Congress a site for a repository under subsection (a) and the site designation is permitted to take effect under section 115, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to 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, a copy of such application.

(c) **STATUS REPORT ON APPLICATION.**—Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b), and annually thereafter until the date on which such authorization is granted, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application; and

(3) any Commission actions regarding the granting or denial of such authorization.

(d) **COMMISSION ACTION.**—The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than—

(1) January 1, 1989, for the first such application, and January 1, 1992, for the second such application; or

(2) the expiration of 3 years after the date of the submission of such application, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2);

whichever occurs later. The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to subtitle C of this Act, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of 70,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.

(e) **PROJECT DECISION SCHEDULE.**—(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository involved, within the time periods specified in this subtitle. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to

Construction
a written and form
application

Report submitted
to Secretary and
Congress

Submitted to
Congress

Traditional
extension

Submitted to
Congress

meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) ENVIRONMENTAL IMPACT STATEMENT—Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository. With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this Act shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high level radioactive waste and spent nuclear fuel in a repository. For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary shall consider as alternate sites for the first repository to be developed under this subtitle 3 candidate sites with respect to which (1) site characterization has been completed under section 113, and (2) the Secretary has made a preliminary determination that such sites are suitable for development as repositories consistent with the guidelines promulgated under section 112a. The Secretary shall consider as alternate sites for subsequent repositories at least three of the remaining sites recommended by the Secretary by January 1, 1985, and by July 1, 1989, pursuant to section 112b) and approved by the President for site characterization pursuant to section 112c) for which (1) site characterization has been completed under section 113, and (2) the Secretary has made a preliminary determination that such sites are suitable for development as repositories consistent with the guidelines promulgated under section 112a. Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this subtitle shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.). Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission as established in title II of the Energy Reorganization Act of 1974 (Public Law 93-438) in

any such statement prepared with respect to the first repository to be constructed under this subtitle, the need for a repository or geologic alternatives to the site of such repository shall not be considered.

REVIEW OF REPOSITORY SITE SELECTION

Sec. 115 (a) DEFINITION—For purposes of this section, the term "resolution of repository siting approval" means a joint resolution of the Congress, the matter after the resolving clause of which is as follows: "That there hereby is approved the site at for a repository, with respect to which a notice of disapproval was submitted by on". The first blank space in such resolution shall be filled with the name of the geographic location of the proposed site of the repository to which such resolution pertains; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or Indian tribe governing body submitting the notice of disapproval to which such resolution pertains; and the last blank space in such resolution shall be filled with the date of such submission.

(b) STATE OR INDIAN TRIBE PETITIONS—The designation of a site as suitable for application for a construction authorization for a repository shall be effective at the end of the 60 day period beginning on the date that the President recommends such site to the Congress under section 114, unless the Governor and legislature of the State in which such site is located, or the governing body of an Indian tribe on whose reservation such site is located, as the case may be, has submitted to the Congress a notice of disapproval under section 116 or 118. If any such notice of disapproval has been submitted, the designation of such site shall not be effective except as provided under subsection (c).

(c) CONGRESSIONAL REVIEW OF PETITIONS.—If any notice of disapproval of a repository site designation has been submitted to the Congress under section 116 or 118 after a recommendation for approval of such site is made by the President under section 114, such site shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress after the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution of repository siting approval in accordance with this subsection approving such site, and such resolution thereafter becomes law.

(d) PROVISIONS APPLICABLE TO THE SENATE.—(1) The provisions of this subsection are enacted by the Congress—

(A) as an exercise of the rulemaking power of the Senate, and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the procedure to be followed in the Senate in the case of resolutions of repository siting approval, and such provisions supersede other rules of the Senate only to the extent that they are inconsistent with such other rules, and

(B) with full recognition of the constitutional right of the Senate to change the rules (so far as relating to the procedure of the Senate) at any time, in the same manner and to the same extent as in the case of any other rule of the Senate.

(2) Not later than the first day of session following the day on which any notice of disapproval of a repository site selection is submitted to the Congress under section 116 or 118, a resolution of

42 USC: 10125

Notice of disapproval, submitted to Congress

Introduction of resolution

4321 et

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