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LTR TO 1ST ROUND S/T

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JUN 13 1985

Mr. Steve Frishman, Director
 Nuclear Waste Programs Office
 Office of the Governor
 P.O. Box 12428
 Austin, Texas 78711

Dear Mr. Frishman:

I would like to call to your attention Section 114(e) of the Nuclear Waste Policy Act of 1982 (Enclosure 1) which requires the Secretary of Energy to prepare and update, in cooperation with affected Federal agencies, a Project Decision Schedule (PDS) for attaining operation of a nuclear waste repository within the time periods specified in the Act. The PDS must provide a sequence of deadlines for Federal agency actions, including an identification of the activities for which a delay in their start or completion will cause a delay in the start-up of repository operation. The NWPA also specifies that failure or expected failure on the part of any Federal agency to comply with any of the deadlines established in the PDS must be explained in a written report to the Secretary of Energy and to the Congress.

NRC received a preliminary draft of the PDS from DOE in January 1985 requesting comments from the participating Federal agencies. We submitted our initial comments to DOE (Enclosure 2) and are now expecting to receive the draft PDS for final NRC comment in early July 1985. In addition to the provisions of the NWPA for State/Tribal interactions with the involved Federal agencies, the Commission's policy guidance (Enclosure 3) requires us "to maintain close communications with DOE, the States and affected Indian Tribes so that required activities and lead times are identified early in the planning process."

We would like to meet with the first round States/Tribes to work out the appropriate lead time for NRC interactions with States/Tribes on the major milestones identified for the PDS (Enclosure 4). We do not intend, nor do we expect, to lock in inviolate commitments from either the States and Tribes or NRC, but rather some general schedule allowances for interactions that we agree are appropriate.

We would like to meet individually with each State and Indian Tribe to get your views on where you would like interactions with NRC so we can consider your views in our planning and comments on the PDS. Please review the enclosed

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Enclosure 1

OFC	: WMPC	: WMPC	: WMRP	: SP	: WM	:	:
NAME	: DMattson	: cp	: JOBunting	: HMiller	: WKerr	: REBrowning	:
DATE	: 85/06/13	:	:	:	:	:	:

LTR TO 1ST ROUND S/T

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material on the PDS, and either Donna Mattson or Catherine Russell of my staff will contact you to arrange a meeting. We need to meet with you by July 19th so that we can submit our comments on time to DOE. If you plan to be in the Washington D.C. area over the next few weeks, we will arrange to meet here. Otherwise, we will call you to arrange a meeting at a mutually convenient place.

We look forward to meeting with you and, in the interim, would be happy to answer any questions you have about this process.

Sincerely,

Joseph O. Bunting, Chief
Policy and Program Control Branch
Division of Waste Management

Enclosures:

1. NWPA of 1982
2. NRC comments to DOE on PDS
3. Commission's policy guidance
4. Milestones identified in PDS

* See previous concurrence.

OFC	: WMPC	: WMPC	: WMRP	: SP	: WM	:	:
NAME	: DMattson:cp	: JOBunting	: HMiller	: WKerr	: REBrowning	:	:
DATE	: 85/06/10	: <i>06/12</i>	:	:	:	:	:

The following people have all received the enclosed letter.

Mr. Don Provost
State of Washington
Dept of Ecology
Mail Stop PV-11
Olympia, WA 98504

Mr. Robert R. Loux, Director
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Mr. Steve Frishman
Nuclear Waste Programs Office
Office of the Governor
P.O. Box 12428
Austin, TX 78711

Mr. Elwood H. Patawa
Umatilla Indian Tribe
P.O. Box 638
Pendleton, OR 97801

Mr. Ron Half-Moon
Nuclear Waste Project Director
Nez Perce Indian Nation
P.O. Box 305
Lapwai, ID 83540

Mr. James Friloux, Program Manager
Nuclear Waste Repository Program
Louisiana Geological Survey
2133 Silverside Drive, Suite L
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Mr. Jack Whittman
High Level Nuclear Waste Program
Associate Director
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101 State Capitol
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James I. Palmer
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State of Mississippi
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Jackson, MS 39205

Mr. Russell Jim
Nuclear Waste Project Manager
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Harmon, Weiss, and Jordon
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Mr. James B. Hovis
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John W. Green
Mississippi Department of
Energy and Transportation
300 Watkins Building
510 George Street
Jackson, MS 39202

Mr. Ronald J. Forsythe
Nuclear Waste Program Manager
300 Watkins Building
510 George Street
Jackson, MS 39202

Mr. Pat Spurgin
High Level Nuclear Waste Program
Director Office of the Governor
101 State Capitol
Salt Lake City, UT 84114

Dr. Hall Bohlinger
Assistant Administrator
Nuclear Energy Division
P.O. Box 14690
Baton Rouge, LA 70898

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)(B) by the State in which such site is located, or under section 118(b)(3)(B) 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, 1988, 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.

(3) 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. 4332(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 made 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

Submitted to Congress

Deadlines, extensions

Submitted to Congress

Construction authorization application.

Report submitted to Secretary and Congress.

ENCLOSURE 1

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 112(a). The Secretary shall consider as alternative 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 112(b) and approved by the President for site characterization pursuant to section 112(c) 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 112(a). 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

any such statement prepared with respect to the first repository to be constructed under this subtitle, the need for a repository or nongologic 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) PROCEDURES 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)(A) 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 10135.

Notice of disapproval, submitted to Congress.

Introduction of resolution.

Report responses, filing with Congress

42 USC: 4321 et seq