



RULEMAKING ISSUE

(Information)

August 4, 1988

SECY-88-227

For:

The Commissioners

From:

Victor Stello, Jr.
Executive Director for Operations

Subject:

RULEMAKINGS WITHIN THE HIGH-LEVEL WASTE REPOSITORY PROGRAM

Purpose:

To inform the Commission of the staff's intentions with regard to rulemakings to resolve regulatory uncertainties in the High-Level Waste Repository Program.

Background:

By memorandum dated June 6, 1988, the Office of the Secretary identified several Commission requests to the staff concerning information dealing with the high-level waste (HLW) repository program. In Item 3, the Commission requested, among other things, a staff paper containing a listing of proposed rulemakings, branch technical positions, standards, etc., that may be suggested by the staff within the next six months to enhance the licensing of a HLW repository.

In addition, in Item 2, the Commission requested a paper by the Executive Director for Operations (EDO) and the Office of General Counsel (OGC), to report on the careful examination of the body of regulations and guidance, including staff technical positions, regulatory guides, and rulemakings, to determine that the proper mix of regulatory tools is in place for the NRC to make a licensing determination for the HLW repository.

In partial response to the Commission's request, the staff is at this time providing information on those subjects identified to date which may require rulemaking to reduce regulatory uncertainty. These rulemakings are a subset of the overall body of regulations and guidance including staff technical positions, regulatory guides and rulemakings which will be provided to the Commission in September 1988 in response to items 2 and 3 in the SECY memorandum dated June 6, 1988.

Contacts:

Wayne Walker, NMSS

49-20447

Brian Thomas, NMSS

49-20433

8906140066 XA

Discussion:

The staff has had an ongoing program of rulemakings in the HLW repository program. Enclosure 1 identifies the current status of all rulemakings which have been approved to date by the EDO for staff expenditure of budgeted resources. As noted in Enclosure 1, there are four currently approved rulemaking efforts in various stages of completion. One of these, conforming 10 CFR Part 60 to be consistent with the final U.S. Environmental Protection Agency's (EPA's) High-Level Waste Standards, is currently being held in abeyance pending EPA's resolution of the Court action vacating and remanding the standard to EPA. ~~Based on consultation with the EPA,~~ the staff believes that the essential character and elements of the EPA standard will remain the same. Therefore, the NRC staff is considering resuming our conforming rulemaking for 10 CFR Part 60.

In addition to these EDO approved rulemaking efforts, the staff has identified nine subjects where regulatory uncertainty could be reduced. These areas are as follows:

1. Methodology for proving compliance with EPA HLW standards
2. Further amplification of the meaning of the phrase "Anticipated Processes and Events and Unanticipated Processes and Events" used in 10 CFR Part 60
3. Further amplification of the meaning of the phrase "disturbed zone" used in 10 CFR Part 60
4. Further amplification of the meaning of the phrase "substantially complete containment" used in 10 CFR Part 60
5. Further amplification of the meaning of the phrase "Pre-Waste Emplacement Groundwater Travel Time" used in 10 CFR Part 60
6. Establishment of criteria for containment of greater-than-Class C low-level waste when it is disposed of in a deep geologic repository
7. Review of the Commission's findings under its 1984 Waste Confidence Decision
8. Definition of "design basis accident dose limit" for repository operations, and
9. Establishment of emergency planning criteria under Subpart I of 10 CFR Part 60.

The staff is currently developing sufficient information to permit requests for EDO approval to begin rulemakings on these subjects. Staff considers EDO approval could be obtained and rulemaking initiated and underway in sufficient time to permit providing guidance to the U.S. Department of Energy (DOE) to support DOE's major repository program production milestones. This will be periodically reassessed in light of staff requirements to react to specific DOE programmatic documents such as the Site Characterization Plan currently scheduled to be submitted in December 1988. This periodic reassessment will be included in the Quarterly Progress Report on the Pre-licensing Phase of DOE's HLW Program.

It should be noted that in addition to the staff's own efforts in this regard the Center for Nuclear Waste Regulatory Analysis (the Center) has been required (as part of their initial effort to obtain a thorough understanding of regulatory requirements) to develop their own independent conclusions regarding areas where regulatory guidance and rulemaking may be necessary to reduce regulatory uncertainty. The first portion of this Center review, which will be focused specifically on site-related uncertainties, is scheduled to be completed by December 1988. Results of this review will be considered in the staff's continuing effort to ensure appropriate action is being taken when necessary and practicable to reduce uncertainties associated with the HLW licensing process.

Current budgeted resources for FY89 are based on two rulemaking actions per year. Depending on the ultimate phasing of the nine possible rulemakings, this estimate may have to be adjusted. The Office of Nuclear Material Safety and Safeguards (NMSS) and the Office of Nuclear Regulatory Research (RES) currently estimate no additional research needs to be initiated to accomplish the nine possible rulemakings identified above.


Victor Stello, Jr.
Executive Director for Operations

Enclosure:
Current status of rulemakings

The Commissioners

-4-

DISTRIBUTION:

Commissioners

OGC

OI

OIA

GPA

REGIONAL OFFICES

EDO

ACRS

ACNW

ASLBP

ASLAP

SECY

ENCLOSURE

1983

1984

1985

1986

1987

1988

1989

1990

Licensing Procedures For
HLW In Geologic Repositories
(10 CFR 60 Procedural)
(Issued February 1981)

Issued Final

Tech. Criteria For HLW
In Geologic Repositories
(10 CFR 60 Technical)

Issued Final

Disposal of HLW within
the Unsaturated Zone
(10 CFR 60 Technical)

▼ - Completed Milestones
▽ - Estimated Time Of Completion

Issued Final

Site Characterization And
State/Tribal Participation
Conform 10 CFR 60 to NHPA)

Publish Issue
Proposed Final
Rule Rule

Negotiated Rulemaking On
Submission & Mgmt. Of
Records & Documents

NEPA Review Procedures
For Geologic Repositories
For HLW

Proposed
Rule

Issue
Final
Rule

Definition Of HLW

Proposed
Rule

Issue
Final
Rule

Proposed
Rule

Court Remanded
EPA HLW Std. (NRC Final Rule Held In
abeyance)

Conform Part
Standards To EPA HLW