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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

June 16, 1993

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- Jeanne Mullikin
- Connie Shum

FROM: James L. Blaha, AO/OEDO

SUBJECT: PROCEDURAL AGREEMENT BETWEEN NRC AND DOE/OCRWM

Enclosed for your information is revised procedural agreements between NRC and DOE on HLW matters.

James L. Blaha, AO/OEDO

Enclosure:
As stated

cc: J. Taylor, EDO
J. Sniezek, DEDR
H. Thompson, DEDS
J. Blaha, AO/OEDO
R. Bernero, NMSS
SECY
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CORRESPONDENCE PDR

Appendices 3 - 6 Reserved

Appendix 7

AGREEMENT CONCERNING THE NUCLEAR REGULATORY COMMISSION ON-SITE REPRESENTATIVE FOR THE REPOSITORY PROJECTS DURING SITE CHARACTERIZATION

The purpose and objective of the on-site representative (OR), as identified in Section 1 of the Procedural Agreement, is to serve as a point of prompt informational exchange and consultation and to preliminarily identify concerns about investigations relating to potential licensing issues.

This appendix is intended to supplement the base agreement and to detail the guidelines which will govern interaction between the NRC OR, including any NRC personnel assigned to the OR, and DOE contractor personnel (prime and sub) through the project's Regulatory Interactions Branch of the Regulatory and Site Evaluation Division. Any interactions between the OR and DOE, its contractors, or subcontractors identified in this appendix will not constitute interactions within the intent of Section 2 of the Procedural Agreement and therefore will not require the preparation of written reports and will not be subject to State/Tribal and public notification and participation or schedule requirements of Section 2 of the Procedural Agreement. The interactions of the OR with DOE and its contractors and subcontractors are not intended to interfere with or replace other channels of NRC/DOE communications and procedures for information release identified in Sections 2, 3A, and 3B of the this agreement and Sections 2, 3, 7, and 8 of the Procedural Agreement.

The following points are agreed to:

1. The OR can attend any meetings on-site or off-site dealing with technical questions or issues related to work required as part of site characterization (e.g., any items to be covered in Site Characterization Plans under the Nuclear Waste Policy Act, as amended) following notification of the cognizant DOE project representative responsible for the meeting as discussed below. Such notification shall be by memorandum, telephone or personal contact and will be given at least 24 hours in advance where DOE has provided adequate prior notification to the OR. The meetings may involve solely DOE or solely DOE's contractors (prime and sub), or any combination of DOE with their contractors.

   If objections to the OR attendance are voiced for any reason, the reason should be specified. Such objections will be infrequent and will be exceptions to the rule. If the OR does not agree with DOE objections, it will be raised to a higher management level for resolution. If resolution cannot be achieved, the OR will not attend the meeting in question.

2. The OR may communicate orally (in person or by phone) with persons employed by DOE, DOE's prime contractors or the prime's subcontractor, (on-site or off-site), providing that the following procedures are followed. If practicable, the OR will arrange for all individual sessions with prime contractor and subcontractor staff by contacting the DOE YMPO Regulatory Interactions Branch Chief or designated DOE staff member. If they cannot be contacted, the OR will attempt to contact the proper prime contractor, section, or department manager. As a minimum, the OR will give timely notification of all such sessions to DOE and the affected

contractor or participant(s) management as soon as possible. The OR will avoid discussions with personnel when it would appear to disrupt important duties and will seek to schedule meetings at a mutually convenient time. It is at the option of DOE, in consultation with participant management, as to whether or not a staff member, supervisor, or third party is to be present. No record of such discussions is required; however, questions that are raised or other issues that arise as a result of these interactions will be reported by the participant to the YMPO Regulatory Interactions Branch Chief, or the NRC Repository Licensing and Quality Assurance Project Directorate, as appropriate.

When NRC headquarters staff is temporarily assigned to the OR office, the NRC Director, Repository Licensing and Quality Assurance Project Directorate, or designee, will notify DOE's Chief of the Regulatory Integration Branch of the reassignment at least one week prior to the reassignment.

3. The DOE project office, DOE prime contractors, and their subcontractors will provide the OR access to records which would be generally relevant to a potential licensing decision by the Commission as follows. Upon request by the OR, DOE or the DOE contractor or subcontractor shall provide: 1) copies of any records of data; 2) records which document the analyses, evaluations, or reduction of data; or 3) records which contain information deduced by reason. These records will be made available to the OR, after the documentation has been reviewed and approved in accordance with the appropriate project office administrative procedure. Records that have not been reviewed and approved by the project office shall be made available for viewing, but not to copy or to retain, at any stage of completion. Requests by the OR for release of such records shall be made through and authorized by the YMPO Regulatory Interactions Branch Chief or staff.

4. Copies of pre-decisional and preliminary drafts of documents required by the Nuclear Waste Policy Act of 1982 as amended, or related to prelicensing activities, which have not been approved by DOE, will not be provided to the OR without DOE approval. Documents of this type may be made available by authorized DOE personnel, for review in DOE or DOE contractor offices. Such documents may not be authorized as available by a DOE contractor alone. Any such documents made available are for the use of the OR and shall not be placed in any NRC public document room.

5. The OR does not have the authority to direct DOE, its contractors or subcontractors to perform any work. Any formal identification of questions or issues for investigation by DOE that could result in contractor or subcontractor work must be formally presented to DOE through the NRC Repository Licensing and Quality Assurance Project Directorate in writing.

6. The OR will attend on-site meetings upon request by the DOE project office or prime contractor on-site whenever possible. The OR will provide any records which would normally be available under 10 CFR Part 2.790 of the

Commission's regulations to project participants upon request to copy. If convenient, copies of such records will be provided by the OR.

7. The OR shall be afforded access to the site, research facilities, and other contractor and subcontractor areas to observe testing or other data gathering activities, in progress, as part of site characterization subject to compliance with the applicable requirements for identification, and applicable access control measures for security, radiological protection and personnel safety, provided that such access shall not interfere with the activities being conducted by DOE or its contractors and that any discussions conducted during such access shall comply with Point 2 above.

   Such access shall be allowed as rapidly as it is for DOE or DOE contractor employees upon display of an appropriate access identification badge, or, if badging is not possible for national security reasons, upon prior notification to DOE or cognizant contractor supervisory personnel (by memorandum, telephone, or personal contact). When an access identification badge is available to DOE or DOE's contractors and subcontractors on a routine basis, it shall be made available to the OR upon completion of the required security clearances and appropriate radiological and personnel safety training. DOE will ensure that any training required is provided to the OR.

8. NRC can videotape or photograph any inanimate objects or geologic features associated with site characterization activities at the Yucca Mountain Site consistent with Nevada test site security. Additionally, upon request from the OR, DOE will provide NRC videotape footage of personnel performing site characterization activities. If requested, the OR and other NRC staff will be permitted to accompany DOE during the videotaping.

9. DOE YMPO may provide, to the NRC OR, the information required to execute DOE responsibilities under Appendix 7 of this agreement by informal note, by telephone, or by personal contact. Such communications shall adhere to the procedures for communication and information release specified elsewhere in the Procedural Agreement and this agreement.

cc w/Enclosures:
C. Gertz, YMPO
T. J. Hickey, Nevada Legislative Committee
R. Loux, State of Nevada
D. Bechtel, Las Vegas, NV
Eureka County, NV
Lander County, Battle Mountain, NV
P. Niedzielski-Eichner, Nye County, NV
W. Offutt, Nye County, NV
L. Bradshaw, Nye County, NV
C. Schank, Churchill County, NV
F. Mariani, White Pine County, NV
V. Poe, Mineral County, NV
J. Pitts, Lincoln County, NV
J. Hayes, Esmeralda County, NV
B. Mettam, Inyo County, CA
R. Carlson, NRC

1. Pre-Exploratory Shaft Phase

2. Site Characterization Phase

3. Construction Authorization and Subsequent Phases

C. Lead Time Required to Develop Adequate Technical Support for Proposed NRC Requirement(s)

D. Lead Time for NRC Implementation

E. Dependence on Completion of Other Rulemaking(s) by NRC or Other Agencies (e.g., any NRC conforming rulemaking for EPA standards must await completion of EPA rulemaking to revise remanded standards)

F. Dependence of Other Rulemakings or Needed Guidance on Completion of NRC Rulemaking on Issue of Interest (e.g., any rulemaking on setting alternate groundwater travel times would depend on completion of rulemaking to revise definition of disturbed zone and/or clarify existing requirements concerning groundwater travel time.)

G. Dependence on Development by DOE or Others of Information, Analyses, or Methodologies bearing on Candidate Issue(s) Identified for Rulemaking

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FACTORS FOR DETERMINING CANDIDATE ISSUES AND PRIORITIES FOR RULEMAKING ON REPOSITORY LICENSING

I. FACTORS TO IDENTIFY POTENTIAL CANDIDATE ISSUES FOR RULEMAKING

A. Statutory Requirement (e.g., revise NRC technical criteria to comply with NWPA requirement of no inconsistency with EPA HLW standards)

B. Commission Commitment (e.g., commitment in response to comments on proposed Part 60 procedural rule amendments to revise Part 51 on NEPA review at later time)

C. Petition for Rulemaking

D. Uncertainties with Potential Significant Impact on NRC Ability to Carry Out its Mission to Protect Public Health and Safety with Timely and Technically Defensible Licensing Decisions (e.g., items in 10 CFR 60 Subparts E (Technical Criteria), F (Performance Confirmation Program), G (Quality Assurance), or I (Emergency Planning Criteria), which are likely to be considered important to safety (pre-closure) or important to waste isolation (post-closure) as defined in 10 CFR 60.2)

1. Regulatory Uncertainties (These concern findings of fact necessary to determine whether NRC requirement has been met. Characteristic question: what must be proven? Regulatory uncertainties typically arise from gaps, ambiguities, or lack of specificity in the language of the regulation.)

2. Technical Uncertainties (These concern information and analyses needed to make findings of fact. Characteristic question: how can compliance be demonstrated? Technical uncertainties typically arise where the data is insufficient to support a conclusion, or where, even with complete and reliable data, alternative interpretations and conclusions may be developed (e.g., two or more numerical models may produce different results from the same data.)

3. Institutional Uncertainties (These concern roles and responsibilities of other federal entities. Institutional uncertainties typically arise where there is a need to clarify or rectify situations where the requirements of other agencies affect NRC's ability to carry out its mission.

4. Procedural Uncertainties (These concern how the DOE application is to be reviewed. Characteristic questions: How can the licensing process be streamlined to meet the NWPA timetable for a repository construction authorization decision? What are NRC's NEPA responsibilities associated with repository licensing, and how can

they most appropriately be fulfilled? Examples of efforts to resolve procedural uncertainties are those to:

a. Specify requirements appropriate for a licensing support system;

b. Specify requirements for adoption of the DOE EIS on repository development;

c. Implement other appropriate opportunities for streamlining the construction authorization proceeding.

E. Situations in which New Information or Changed Circumstances render an Existing Regulatory Requirement Inadequate or Inappropriate. (e.g., original Part 60 technical criteria did not address in sufficient detail the special requirements for a repository in an unsaturated zone, as at Yucca Mountain. Unsaturated zone requirements were subsequently addressed in greater detail in an amendment to Part 60.)

II. FACTORS FOR RANKING IMPORTANCE OF IDENTIFIED CANDIDATE ISSUES

A. Existence of Statutory Requirement or Commission Commitment

B. Significance of Potential Impact on Statutory Schedule for Repository Program

C. Significance of Potential Impact on NRC Licensing Proceeding

1. Nature and Number of Other Regulatory Findings Affected

2. Programmatic Acceptability of Allowing Issue to Remain Unresolved Prior to Hearing

D. Degree of Authoritativeness Required for Issue Resolution

1. Need for Enforceability

2. Likelihood of Reopening of Dispute at Hearing

E. Extent to which Issues are Policy-Oriented rather than Factual

III. FACTORS FOR SETTING SCHEDULE PRIORITIES AMONG ISSUES SELECTED FOR RULEMAKING

A. Existence of Externally-Imposed Requirement (statutory or judicial)

B. Immediacy of Impact on DOE Program

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

JUN 11 1993

MEMORANDUM TO: James L. Blaha, Assistant for Operations
Office of the Executive Director for Operations

FROM: Robert M. Bernero, Director
Office of Nuclear Material Safety and Safeguards

SUBJECT: REVISED PROCEDURAL AND PROJECT-SPECIFIC AGREEMENTS

The purpose of this memorandum is to provide the enclosed revised "Procedural Agreement Between the Nuclear Regulatory Commission and the U.S. Department of Energy Identifying Guiding Principles for Interface During Geologic Site Investigation and Site Characterization" (hereafter referred to as the Procedural Agreement), and the "Agreement Between the U.S. Department of Energy Office of Civilian Radioactive Waste Management and the Nuclear Regulatory Commission Division of High-Level Waste Management During Site Characterization Programs and Prior to the Submittal of an Application for Authorization to Construct a Repository" (hereafter referred to as the Project-Specific Agreement) for transmittal to the Commissioner Assistants for information. These documents outline the revised procedures for staff consultation and exchange of information which the staff and the U.S. Department of Energy (DOE) and its designated contractors will observe in connection with the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982, as amended.

The substantive changes that were incorporated into the Procedural Agreement dealt with newly added or revised guidelines for conducting technical exchanges, site visits, licensing and management meetings, and quality assurance audits and surveillances. Similarly, major changes in the Project-Specific Agreement included revised guidelines for preparing interaction reports, maintaining and distributing site characterization data, communications between points of contact from NRC and DOE project offices, acquisition of samples during site characterization activities by NRC contractors, and specific on-site representative responsibilities and authority.

The staff will begin implementing these revised agreements by training both NRC and Center for Nuclear Waste Regulatory Analyses staff on the revised Procedural and Project-Specific Agreements, as well as any applicable policies and procedures regarding openness with the State and affected units of local government. This training, scheduled for the July 1993 time frame, will complete the follow-up action committed to in the memorandum for the Chairman, dated April 8, 1992, on openness of interactions between NRC and DOE.

Courtesy copies of both agreements were provided to the Office of the Inspector General (OIG) for their review, although OIG indicated that no formal review was necessary.

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If you have any questions concerning these issues, please contact me at 504-3352, or Mr. Joseph Holonich of my staff at 504-3387.

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosure: As stated

AGREEMENT BETWEEN THE U.S. DEPARTMENT OF ENERGY OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT AND THE NUCLEAR REGULATORY COMMISSION DIVISION OF HIGH-LEVEL WASTE MANAGEMENT DURING SITE CHARACTERIZATION PROGRAMS AND PRIOR TO THE SUBMITTAL OF AN APPLICATION FOR AUTHORIZATION TO CONSTRUCT A REPOSITORY

This agreement implements, on a repository project-specific basis, the "Procedural Agreement Between the Nuclear Regulatory Commission and the U.S. Department of Energy Identifying Guiding Principles for Interface During Geologic Site Investigation and Site Characterization" (hereafter referred to as the Procedural Agreement) made between the Nuclear Regulatory Commission and the U.S. Department of Energy (DOE), and supersedes all previous project-specific agreement(s) between NRC's Division of High-Level Waste Management (HLWM) and DOE's Office of Civilian Radioactive Waste Management (OCRWM) regarding information exchange and consultation for potential repository sites. This agreement implements Section 6 of the Procedural Agreement which requires that project-specific agreements, tailored to the specific project and reflecting differences in sites and project organizations be negotiated to implement the principles established in the Procedural Agreement. Because this repository project level agreement is drawn to implement the principles set forth in the Procedural Agreement, appendices detailing repository project-specific items will be developed as necessary. These appendices will be updated, added to, or changed as required. Nothing in this agreement shall be construed either to modify the Procedural Agreement in any way or to confer rights on any party other than the parties to these agreements.

1. NRC On-Site Representatives (ORs)

At such time as the NRC ORs are stationed at the site, they are to be provided with office space that is near the DOE project office and site activities. Where such office space can be provided, DOE is to provide such space near the site activities and the NRC is to provide space that can be visited by the public.

The NRC OR shall be afforded access to personnel, project records and facilities at the respective site, research facilities and other contractor and subcontractor areas. Access will be subject to applicable requirements for proper identification and compliance with applicable access control measures for security, radiological protection and personnel safety. DOE will identify, at the time it makes information available to NRC, any records which it considers exempt from public disclosure under the Freedom of Information Act. NRC, following consultation with DOE, will withhold such information from public disclosure to the extent stated in 10 CFR Part 9. Records as used above are defined as all records that would be generally relevant to a potential licensing decision by the Commission. Included in this category are records kept by DOE and DOE contractors and subcontractors accessible to DOE.

Project-specific conditions are discussed in the appendices.

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2. Interactions

A. Interactions

Schedules agreed on, pursuant to Section 2g of the Procedural Agreement, for future interactions covering approximately a six month period will be updated at least bi-weekly and made available in the local and headquarters public document rooms (PDRs) of both NRC and DOE. In addition, toll-free telephone services will be operated by DOE headquarters and NRC to announce the meeting schedules. A description of this process for making the schedule of upcoming interactions publicly available will be provided by a DOE annual Federal Register Notice. Representatives from the affected State, units of local governments, and Indian Tribes will be given the opportunity to participate at the interactions. These interactions will be open, with members of the public being permitted to attend as observers, consistent with security access and safety rules.

Dates for major interactions will be agreed to as far in advance as is practicable, with a time frame of six months in advance as the goal. Final agreement as to agenda and participants will both be reached normally a minimum of 10 working days prior to the scheduled date for the meeting and be made available in the PDRs. Deviations from the agreed to agenda will be discussed among all organizations that participate in developing the agenda. Changes will be agreed upon by DOE and NRC. Although both agencies will use their best efforts to provide the indicated lead times, nothing in this section shall be construed as preventing the scheduling of interactions with shorter lead times by mutual agency agreement.

B. Licensing and Management Meetings

As part of the discussion during licensing and management meetings held under Section 2c of the Procedural Agreement, issues related to policy, budget, program scope, commitment of resources and program schedules may be included as appropriate. The procedures established in Section 2A above regarding dissemination of schedules and agendas for the technical interactions will also be used to disseminate schedules and agendas for the licensing and management meetings. Any commitments that are made during the meeting will be documented into formal correspondence by the party(ies) making the commitments.

C. Interaction Reports

The format of the interaction report should include a short introductory paragraph stating the date of the interaction, the organizations that participated, and the purpose. Attached to the minutes should be the list of attendees. In the body, the minutes should describe the presentations made and the discussions held during the interaction. Information presented in the minutes will only report the events that took place during the interaction. Copies of

presentation materials should be included as attachments to the minutes. Copies of materials such as preliminary data, maps, logs, and laboratory books discussed at site visits are not prepared as documentation of the interaction. Documentation may be provided, upon request, to a participant on a site visit in accordance with Section 3a of the Procedural Agreement. Following preparation of the minutes and an informal review within DOE and NRC to assure accuracy, NRC and DOE lead representatives will sign the minutes. An opportunity will be provided for representatives from the State, affected units of local government, and affected Indian Tribes to include in the summary any positions they had taken in the interaction. DOE and NRC will issue interaction reports within 30 days after the interaction. If a jointly approved NRC/DOE interaction report is not issued within 30 days, NRC and DOE may elect to issue an independent record of events of the interaction. Interaction reports will be provided to the State, affected units of local government, affected Indian Tribes, and the NRC and DOE PDRs. NRC will provide the joint reports. If DOE and NRC issue separate reports, each agency will be responsible for providing only its own report.

3. Timely Release of Information

A. Report Inventory

Each agency will develop as soon as practicable and thereafter maintain and exchange an inventory of reports, plans, procedures, and technical positions (products) both completed and in process. This inventory will include descriptions of product scope and purpose as well as the scheduled dates for completion of draft and final products. The inventories will be updated and exchanged at least semi-annually. This will allow each agency to request products from the other.

B. Points of Contact

Respective points of contact for DOE and NRC are defined in appropriate appendices. Either agency may change their points of contact unilaterally with prior notification to the other party. Other organizations within NRC working on the high-level waste repository will use these designated points of contact within NRC's HLWM for interactions with DOE's OCRWM. Details of the information exchange will be determined by DOE requirements and defined in appendices as appropriate.

Telephonic communications covered under Item c in Appendix 1 are intended solely for the exchange of information and ideas by NRC and DOE personnel involved in the various technical areas relating to the site information program for the potential repository site. Individuals participating in such communications have no authority to present official NRC or DOE positions, or to make official policy statements on behalf of either NRC or DOE.

C. Site Characterization Data for the Potential Repository Site.

To keep the NRC on-site representative informed regarding what data will be forthcoming and when, DOE will notify the on-site representative of the schedule of planned field and laboratory testing covering as long a period as practicable. The representative will also be notified of changes to the test schedule.

DOE will develop, as soon as practicable, and thereafter maintain a catalog of all site characterization data, except those excluded by law. Descriptions of data in the catalog will include: time, place, and method of acquisition; an indication of the scope of the information; and the location where they may be examined. This catalog will be maintained in a computer data base, readily available for read-only access by the NRC, as soon as possible, in a mutually agreed upon electronic format by NRC and DOE. The data catalog will be updated in accordance with DOE procedures. When developed and implemented, revisions to the documentation for access to the data catalog will be provided to NRC as they are made. DOE will revise the data catalog on a quarterly basis and provide NRC with a hard copy or a mutually agreeable electronic format and medium until computer access is available.

Upon NRC request and at a location chosen by DOE, DOE will make data available to NRC for examination. After the quality assurance checks specified in Section 3a of the Procedural Agreement have been completed (which will normally be within 45 days from data acquisition either in the laboratory or in the field), data will be provided to NRC in hard copy format, or in a mutually agreeable electronic format and medium upon request. As site characterization proceeds, DOE may find it advantageous to maintain electronic data bases containing basic processed data. As these data bases become available on-line to the participants, the NRC will be allowed on-line, read-only[1] computer access to these systems provided that all questions of security, and comparable access to the State and the public can be resolved in a manner that protects the integrity of the system.

Because of the preliminary nature of these data, all such data placed in the PDR will carry the following caveat: "QA checks on data contained here have only been performed to determine that the data have been obtained and documented properly. DOE cautions that any information is incomplete and preliminary. This information is subject to change as a more representative data base is accumulated. Any analyses and interpretations should be made accordingly."

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[1] "read-only" means that the data file can be read, copied, and down-loaded (ie., the copied portion of the file can be electronically transmitted to another file for the reader's use), but that no manipulation or changes to the original master data file can be performed by the reader.

NRC will also notify DOE of its schedule (and those of its contractors) of planned field and laboratory testing conducted at or with samples from the potential repository site and will establish, maintain, update, and provide to DOE an inventory of, and access to, data as described in the preceding paragraphs.

Upon request by NRC or DOE, either party will provide the other a controlled copy(ies) of any specially developed or modified computer programs (including programming within commercially available software and associated linking programs or programs passing data) used in making site characterization analyses, performance assessments, design analyses, and design drawings, subject to resolution of proprietary, privileged, or licensing concerns. Such programs will be available to NRC or DOE upon citation in a programmatic document (i.e., documents published by either party). Each party must maintain this software under its own appropriate software configuration management controls. Such programs will be provided in a mutually agreed upon electronic medium. Each party will provide relevant specifications for use of requested software; however, each party will be responsible for acquisition and maintenance of the commercially available software and/or hardware needed to run the programs requested. Each party will pay for any respective licensing and maintenance costs associated with such hardware and/or software.

4. Samples

In accordance with Appendix 2, DOE will provide NRC with samples.

5. Terms of Agreement

The terms of this agreement may be amended at any time by mutual consent, in writing.

6. Effective Date

This agreement shall enter into force on the latter date of signature by the parties.

Signature Blocks

5/20/93

Dwight D. Shelor, Associate Director
for Systems and Compliance
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy

May 20, 1993

Joseph J. Holonich, Director
Repository Licensing and
Quality Assurance Project
Directorate
Division of High-Level Waste
Management
Office of Nuclear Material
Safety and Safeguards
U.S. Nuclear Regulatory
Commission

5/19/93

Carl P. Gertz, Associate Director
for Geologic Disposal
Office of Civilian Radioactive
Waste Management
U.S. Department of Energy

APPENDICES

Appendix 1	Yucca Mountain Site Characterization Project Office (YMPO)
Appendix 2	Acquisition Of Samples During Site Characterization Activities By NRC Contractors
Appendices 3-6	Reserved
Appendix 7	Agreement Concerning The Nuclear Regulatory Commission On-Site Representative For The Repository Projects During Site Characterization

Appendix 1

YUCCA MOUNTAIN SITE CHARACTERIZATION PROJECT OFFICE (YMPO)

Points of contact between NRC and DOE projects concerning Yucca Mountain site characterization.

a. 10 CFR Part 60 Level Communications (e.g., Site Characterization Plan (SCP); Site Characterization Analysis; SCP Progress Reports; comments on these documents)

Director, NRC Office of Nuclear Material Safety and Safeguards to and from Director, DOE Office of Civilian Radioactive Waste Management

DOE	NRC
Director Office of Civilian Radioactive Waste Management U.S. Department of Energy Washington, D.C. 20585	Director Office of Nuclear Material Safety and Safeguards U.S. Nuclear Regulatory Commission Mail Stop 6-E-6 Washington, D.C. 20555

b. Formal Communications

DOE Associate Director for Systems and Compliance to and from NRC Director, Repository Licensing and Quality Assurance Project Directorate

DOE	NRC
Associate Director for Systems and Compliance Office of Civilian Radioactive Waste Management U.S. Department of Energy Washington, D.C. 20585	Director Repository Licensing and Quality Assurance Project Directorate Division of High-Level Waste Management U.S. Nuclear Regulatory Commission Mail Stop 4-H-3 Washington, D.C. 20555

c. Telephonic Communications

Formal transmittal of technical information to the NRC shall be through the Office of Systems and Compliance. The points of contact for informal, technical communications (eg., telephone calls) are listed below:

AREA	NRC	DOE
Quality Assurance	Quality Assurance Section Leader or designee	Director, Yucca Mountain Quality Assurance Division
Performance Assessment	Repository Performance Assessment Section Leader or designee	Chief, Technical Analysis Branch
Waste Package	Materials Engineering Section Leader or designee	Chief, Field Engineering Branch
Geologic Repository Operations Area	Geotechnical Engineering Section Leader or designee	Chief, Field Engineering Branch
Exploratory Studies Facility	Geotechnical Engineering Section Leader or designee	Chief, Exploratory Studies Facility Branch
Geology	Geology-Geophysics Section Leader or designee	Chief, Site Investigations Branch
Hydrology	Hydrologic Transport Section Leader or designee	Chief, Site Investigations Branch
Geochemistry	Hydrologic Transport Section Leader or designee	Chief, Site Investigations Branch

d. NRC On-site Representative (OR)

Communications and interactions between the NRC OR and DOE are discussed in Appendix 7.

Appendix 2

ACQUISITION OF SAMPLES DURING SITE CHARACTERIZATION ACTIVITIES BY NRC CONTRACTORS

Requests for collection of samples (e.g., geologic, simulated glass, concrete, steel, water, air, plants, animals, etc.), with NRC-supplied specifications and for which a process of acquisition is not specified in a Yucca Mountain Project Office (YMPO) Administrative or Branch Technical Procedure, are recognized by DOE as legitimate. Upon review and acceptance of the request, DOE will arrange for NRC to receive such requested materials in response to a written request. DOE may request NRC, on a case-by-case basis, to reevaluate the amount of sample material requested in light of the needs of the site characterization program and the availability of samples. DOE will prepare NRC-specified samples for transport.

Controlled copies of all applicable YMPO Samples Acquisition and Handling Procedures will be provided to the NRC's Director, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management or designee. The NRC will use these procedures to request samples from DOE, which are being obtained as part of the site characterization program.

PROCEDURAL AGREEMENT BETWEEN THE NUCLEAR REGULATORY COMMISSION AND THE U.S. DEPARTMENT OF ENERGY IDENTIFYING GUIDING PRINCIPLES FOR INTERFACE DURING GEOLOGIC SITE INVESTIGATION AND SITE CHARACTERIZATION

This Procedural Agreement outlines procedures for staff consultation and exchange of information which the Nuclear Regulatory Commission and the U.S. Department of Energy (DOE) and its designated contractors will observe in connection with the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982, as amended (NWPA). The purpose of these procedures is to assure that an information flow is maintained between the two agencies which will facilitate the accomplishment by each agency of its responsibilities relative to site investigation and characterization under the NWPA. The agreement is to assure that NRC receives adequate information on a timely basis to enable NRC to review, evaluate, and comment on those DOE activities of regulatory interest in accordance with DOE's project decision schedule and thereby facilitate early identification of potential licensing issues for timely resolution. The agreement is to assure that DOE has prompt access to NRC for discussions and explanations relative to the intent, meaning and purpose of NRC comments and evaluations of DOE activities and so that DOE can be aware, on a current basis, of the status of NRC actions relative to DOE activities.

This Procedural Agreement shall be subject to the provisions of any project decision schedule, or any schedules specifically related thereto, that may hereafter be established by DOE, and any regulations that may hereafter be adopted by NRC, pursuant to law. In particular, nothing herein shall be construed to limit the authority of the Commission to require the submission of information as part of a general plan for site characterization activities to be conducted at a candidate site or the submission of reports on the nature and extent of site characterization activities at a candidate site and the information developed from such activities. In accordance with 10 CFR 60.18(l), no action taken pursuant to this agreement shall be deemed to constitute a commitment to issue any authorization or license, or in any way affect the authority of the Commission, its officers, and staff, in any licensing proceeding.

1. NRC On-Site Representatives

   As early as practicable following area phase field work, NRC on-site representatives will be stationed at any site undergoing investigation principally to serve as a point of prompt informational exchange and consultation and to preliminarily identify concerns about such investigations relating to potential licensing issues.

2. Interactions

   From the time this agreement is entered into, and for so long as site characterization activities are being planned or are in progress, DOE and NRC will schedule and hold interactions periodically as provided in this section. Interactions are classified as technical meetings, technical exchanges, site visits, or licensing and management meetings. A written report agreed to by both DOE and NRC will be prepared for each interaction.

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a. Technical meetings will be held between DOE and NRC technical/ licensing staff to: review and consult on interpretations of data; identify potential licensing issues; agree upon the sufficiency of available information and data; and agree upon methods and approaches for the acquisition of additional information and data as needed to facilitate NRC reviews and evaluations and for staff resolution of such potential licensing issues. Technical meetings may be a forum for the expression of technical/regulatory policy, negotiation of commitments and an agreement on the acceptability of actions on the part of both agencies.

b. Technical exchanges will be held between DOE and NRC technical/ licensing staff to: discuss a specific technical and/or regulatory topic within their areas of expertise (e.g., geology, hydrology, seismology, waste package design, repository design). The primary purpose of a technical exchange is to promote a better mutual understanding of the topic prior to an officially established technical or regulatory position. For example, a discussion of the mechanism of a process, the occurrence of a particular event, or the technical aspects of regulatory interpretations is appropriate for discussion during a technical exchange. Technical exchanges will not be used as a forum to officially establish or change technical and/or regulatory positions, or extract commitments, or agree to courses of action.

c. Site visits will be held between DOE and NRC technical staff to: explain technical information related to ongoing field or laboratory site characterization activities; and visit locations at the site for field briefings and discussions of preliminary data and interpretation derived from ongoing work. The primary purpose of a site visit is for both agencies to benefit from discussion of technical topics in the field. The itinerary for site visits will be developed and noticed similar to a technical exchange agenda. The documentation requirements for the proceedings of site visits are not the same as for technical exchanges, due to the formative nature of preliminary data and interpretations. Site visits will not be used as a forum to officially establish or change technical and/or regulatory positions, establish commitments, nor agree to courses of action. Proceedings covered by Appendix 7 of the "Agreement Between the U.S. Department of Energy Office of Civilian Radioactive Waste Management and the Nuclear Regulatory Commission Division of High-Level Waste Management During Site Characterization Programs and Prior to the Submittal of an Application for Authorization to Construct a Repository" (hereafter referred to as the Repository Project-Specific Agreement) do not apply to site visits.

d. Licensing and management meetings will be held whenever necessary, but at least semi-annually, to review the summary results of the technical interactions; to review the status of outstanding concerns and issues; to discuss plans for resolution of outstanding items and issues; to update the schedule of technical meetings and other actions needed for staff resolution of open items regarding site characterization

programs; and to consult on what guidance is advisable and necessary for NRC to prepare. Unresolved management issues will be promptly elevated to upper management for resolution. Licensing and management meetings are conducted to discuss major nontechnical issues related to program policy, schedules, scope, and major commitment of resources. Any commitments that are made during the meeting will be documented into formal correspondence by the party(ies) making the commitments.

e. Early interactions will be scheduled as needed to discuss written NRC comments on DOE documents such as Study Plans, DOE's semi-annual progress reports, and technical reports to foster a mutual understanding of comments and the information or activities needed for staff resolution of the comments.

f. In formulating plans for activities which DOE will undertake to develop information needed for staff resolution of potential licensing issues, DOE will meet with NRC to provide an overview of the plans so that NRC can comment on their sufficiency. These discussions will be held sufficiently early so that any changes that NRC comments may entail can be duly considered by DOE in a manner not to delay DOE activities.

g. Schedules of activities pertaining to interactions will be made publicly available. Potential host States, affected units of local government, and affected Indian Tribes will be notified and invited to attend interactions covered in this section (Section 2, Interactions). The notification will be given on a timely basis by NRC 10 working days prior to the interaction, where possible. These interactions will be open, with members of the public being permitted to attend as observers.

3. Timely Release of Information

a. Data collected during site investigations will be made available to NRC on a current, continuing basis after DOE (or DOE contractor) performs internal checks that are inherent in determining that the data were obtained and documented properly, in accordance with applicable quality assurance requirements and procedures.

b. DOE's analyses and evaluations of data will be made available to NRC in a timely manner.

c. DOE will provide, in a timely manner to NRC, controlled copies of any specially developed computer programs used in making site characterization analyses, performance assessments, or design analyses.

4. Samples

In accordance with Appendix 2, "Acquisition of Samples During Site Characterization Activities by NRC Contractors," of the Repository Project-Specific Agreement and applicable DOE controlled administrative

procedures, DOE will provide NRC with samples to be used by NRC for independent analysis and evaluation. Controlled copies of the applicable procedures shall be provided to the NRC's Director, Repository Licensing and Quality Assurance Project Directorate or designee.

5. Agency Use of Information

It is understood that information made available to either agency under this agreement may be used at that agency's option in carrying out its responsibilities.

6. Project Specific Agreements

Specific agreements will be developed for each project and site under investigation.

7. Consultations

Nothing in this agreement shall be construed as limiting forms of informal consultation not mentioned in this agreement (for example, telephone conversation or exchanges of reports). These other consultations will be documented in a timely manner.

8. QA Audits and Surveillances

NRC staff, and consistent with security access and safety rules, representatives from affected units of State, local governments, and Indian Tribes, will be permitted to observe DOE QA audits and surveillances. In addition, the NRC may perform audits of DOE and participant QA programs.

Signature Blocks

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Date: 6/3/93

Robert M. Bernero, Director
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U.S. Nuclear Regulatory Commission

Date: May 13, 1993