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(50 FR 2579)

ENVIRONMENTAL POLICY INSTITUTE

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Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
1717 H Street NW  
Washington, DC 20555

Attn: Docketing & Services Branch

Dear Mr. Secretary,

Attached are the comments of the Environmental Policy Institute concerning the Commission's proposed revisions to 10 CFR Part 60, "Disposal of High-Level Radioactive Waste in Geologic Repositories; Amendments to Licensing Procedures."

These comments are in response to the Commission's notice for comment published in the Federal Register on January 17, 1985 (50 FR 2579).

Respectfully submitted,



David Berick, Director  
Nuclear Waste & Safety  
Project

2 Attachments

*D=164  
Add: Charles Puckard, 113055  
James Way, 7604 MMBB  
William Rigney, 63355*

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Acknowledged by Card. ....



March 14, 1985

In the matter of:

10 CFR Part 60

Disposal of High-Level Radioactive  
Waste in Geologic Repositories;  
Amendments to Licensing Procedures

COMMENTS OF THE ENVIRONMENTAL POLICY INSTITUTE ON PROPOSED  
AMENDMENTS TO 10 CFR PART 60 LICENSING PROCEDURES FOR GEOLOGIC  
REPOSITORIES

Introduction

The NRC proposes to amend its current regulations for licensing high-level waste repositories to bring them into conformance with the Nuclear Waste Policy Act (NWPA). While we acknowledge that some conforming changes are in order, such as the redesignation of the Site Characterization Report and changes in its content to conform to the requirements of Sec. 113 of the NWPA, the proposed changes far exceed those required for conformance. Furthermore, NRC has arbitrarily chosen to conform some provisions of Part 60, while effectively suspending others, such as those related to NEPA. Finally, NRC proposes adoption of rules and procedures, such as its review of the Department of Energy's (DOE) draft environmental assessments (EA's), which are based on a Procedural Agreement rather than statutory authority; a questionable basis for regulation and threatening to future interpretation.

NRC Arbitrarily Suspends Part 60 Requirements

The proposed rule identifies five "principal aspects" of NRC repository licensing procedures under review for conformance to the NWPA. NRC rather arbitrarily decides to address only two of the five in the proposed rulemaking. While it could be argued that NRC is merely "reviewing" the need for conformance in the remaining three areas, such as the definition of high-level waste, the proposed rule would actually suspend those aspects of Part 60 that are related to the National Environmental Policy Act (NEPA). As such, there would not be effective regulations pertaining to NEPA authority nor would NRC exercise such authority.

The severity of this action is heightened because NRC is also suspending regulations which are related to its NEPA authority, such as its review of the DOE's site screening activities, but which may also rest upon the NRC's Atomic Energy Act (AEA) authority to protect public health and safety.

We must also point out that NRC is currently reviewing the EA's in anticipation of filing comments coincidental to the March 20, 1985 close of the DOE public comment period. NRC is not considering a range of site screening issues related to NEPA and its overlapping health and safety authority(see 50 FR 2579-2590, also see Browning/Cunningham memo, "Role, Scope, and Issues in Environmental Assessment Review" dated October 10, 1984, attached). As such, NRC appears to have already implemented the suspension of key elements of the existing regulations in the absence of any notice and certainly prior to the promulgation of final regulations pursuant to this rulemaking. This raises serious questions concerning NRC compliance with the Administrative Procedures Act.

Aside from the APA question, NRC arbitrarily proposes to suspend its regulations related to NEPA and early review of DOE's site selection activities on substantive merits. As stated in a footnote in the preamble(footnote #1, 50 FR 2580), NRC intends to defer NEPA related aspects of conformance to a subsequent rulemaking since such issues require modification of Part 51. While reliance on revision of, and conformance to, Part 51 may have been a logical argument for deferral of NEPA-related issues when the NRC staff first circulated drafts of the proposed rule in mid-1983, the logic of this argument has long since faded. NRC revised Part 51 on March 12, 1984(49 FR 9352).

With Part 51 and the NRC's basic NEPA policies revised a year ago, there is no reason not to incorporate such changes as may be necessary to high-level waste repositories in the current rulemaking. The fact that repositories were not specifically addressed in the Part 51 revisions only argues for the inclusion of such revisions now since the bulk of Part 51 issues have been addressed. By electing to use the Part 51-conformance argument for suspending NEPA and early site review related aspects of Part 60, NRC creates a Catch-22 situation. NRC can't review DOE's siting program, even in the environmental assessments(EA's), because there aren't any regulations, and there aren't any regulations because NRC's regulations have to be suspended because they address DOE's siting program.

Even if the need for a separate, protracted NEPA-related rulemaking were valid, which it is not, the Commission has arbitrarily suspended Atomic Energy Act-related regulation in the process. As the Commission acknowledged in issuing the current version of Part 60, the Commission has a "health and safety" responsibility for review of DOE's siting program and the suitability of DOE's sites that parallels the Commission's NEPA authority to require early site review. As stated in the preamble to Part 60,

"The Commission recognizes that, under the provisions of the Atomic Energy Act, a consideration of alternatives might indeed be appropriate, where necessary or desirable to protect health." (46 FR 139712, Feb. 25, 1981)

Unless the NRC reviews the methodology and other pertinent aspects of the DOE siting process, in the EA's if that is now where DOE and NWPA address such issues, than it cannot know if public health and safety is being compromised. NRC's refusal to review

"...the methodology used by DOE to compare sites or upon the relative merits of one site against one another..."(50 FR 2583)

is contrary to its early site review obligations to protect public health and safety.

As is clear from the draft EA's and background documents, DOE has selected sites on the basis of such criteria as the "ease of constructability" rather than public health and safety. A central feature of the DOE site selection process, the selection of sites based on the need for diverse geohydrologic provinces, is not provided for in the NWPA and is essentially a management decision to hedge against DOE's decision to screen sites based upon inadequate data. This DOE siting policy is contrary to the requirements of protecting public health and safety because there is no assurance that the sites chosen are those most suitable for protection of health and safety.

While we might agree with NRC's that the current requirements in Sec. 60.11 to include the method by which the site was selected and identification of alternative sites are required by the NWPA to be addressed by DOE in the EA's and NRC should also alter its Sec. 60.11 requirements to address them in that form(50 FR 2583), we completely disagree that this change somehow negates NRC's interest or obligation to address those issues. If issues, such as site selection methodology, are to be included in the EA's, as NRC proposes, all the more reason why NRC's review of the EA's should extend to those aspects of the EA. Instead, NRC proposes to exclude those aspects of review while categorically concluding that

"Such review is not necessary to fulfill any of its statutory responsibilities."(50 FR 2583)

This is an astounding statement given the fact that the current rule includes such requirements specifically to fulfill such statutory responsibilities, especially NEPA. In light of NRC's failure to confront what alteration there may be in its NEPA responsibilities as a result of the NWPA, we must conclude that NRC's NEPA responsibilities remain unchanged and that the current requirements for review of DOE site selection must remain intact. They may be transferred, by rule, to NRC review of the EA's, but they may not be arbitrarily suspended as proposed.

As explained more fully below, we do not believe that a procedural agreement with DOE may serve as a substitute for statutory authority for regulation or the exercise of that

authority. NRC had a statutory "interest" in DOE's siting program when the current regulations were promulgated. It either continues to have that authority and may regulate and review DOE's program under that authority or it does not. A procedural agreement does not, nor cannot, constitute regulatory authority.

Finally, it is our view that NRC's authority and responsibility under NEPA remains unaltered by the NWPA and that NRC authority under other statutes is similarly unsubordinated by the NWPA. To the extent that the NWPA does address NRC's authority, it underscores NRC's independent role as a regulator of DOE's high-level waste repositories.

#### NRC Proposes to Restrict Review and Comment on Site Characterization Analysis

NRC proposes to drastically alter its requirements for review and comment of the Commission's Site Characterization Analysis(SCA). Rather than release a draft SCA for public review and comment, NRC now proposes to issue a single, final SCA without benefit of comment. Comment on the SCA would be provided for in a 90-day comment period after publication, but NRC would not be required to take such comments into account as now required in Sec. 60.11(e).

The NRC rationale for dropping the draft SCA and terminating an opportunity for review and comment of the NRC analysis before is issued a a final report is questionable. The principal argument for such a change appears to be the "scheduling mandates of the Waste Policy Act"(50 FR 2584). The other "arguments" as to why this change should be made, such as the anticipated "extensive period of interaction between DOE and the states" and the number of technical meetings between DOE and NRC under the Procedural Agreement do not, contrary to NRC, provide a basis for dropping the draft SCA.

The purpose of the Draft SCA is not, as NRC implies, merely to allow states, Indian tribes and the public to gain access to information on the DOE program. The Draft SCA also allows the states, Indian tribes and the public access to information about the NRC program. As stated in the preamble to the current rule, NRC intended that the draft SCA be used to provide opportunity for public comment on the NRC staff analysis of the DOE site characterization report.

While it is understandable that the NRC staff does not wish to have its analysis subject to public review and comment, a series of technical meetings or DOE interaction with the states does not substitute for a formal opportunity to review and comment on a critical NRC document any more than those meetings or DOE hearings constitute a substitute for the site characterization plan(SCP) or the SCA itself. To the extent that NRC believes that the SCP and the SCA are essential component of its review of DOE site characterization activities, the opportunity to review and comment on that analysis is

similarly essential.

The dramatic changes cited by NRC in the DOE program are not, in fact, of such magnitude that they alter the original justification for the draft SCA. For example, NRC assumed, as noted in the preamble to the current rule, that DOE would provide an opportunity for public comment on its site characterization report prior to submittal to NRC (46 FR 13975, Feb. 25, 1981). Likewise, the current rule envisioned the preparation, by DOE, of an environmental impact statement for site characterization. The final rule was modified, by adding a footnote to Sec. 60.11, specifically to allow DOE to incorporate information in its EIS into the SCA including the compilation of State, Indian and public views.

The new procedures for "interaction" under the NHPA that NRC cites as justification for dropping the draft SCA are not substantially different from the level of "interaction" already contemplated at the time the current rule was promulgated and do not justify alteration of this part of the rule.

An argument must also be made that the very activities, such as the large number of technical meetings between DOE and NRC, cited by NRC as a reason to delete the draft SCA requirement, in fact, argue for retaining the requirement. Rather than "freezing" the comment and review process, as the NRC puts it, the draft SCA is simply needed to "condense" the numerous technical issues and discussions. These discussions, by NRC's admission, will be quite extensive, will take place at a wide variety of locations, and times. It is only reasonable to "sum up" or "condense" the product of those meetings, and their relevance to the DOE site characterization activities.

NRC must conduct this "summary" and drafting activity in any event in order to prepare its SCA. NRC would certainly be expected to benefit from public review and comment, including comment from those interested parties, who for reasons of time and resources cannot possibly be expected to attend the numerous and scattered technical and DOE meetings.

The draft SCA is also necessary to the preservation of an independent NRC regulatory role. Absent the draft SCA, even close observers of the technical meetings, will have little reason to believe that NRC's final conclusions were based on an independent evaluation and not swayed by "backroom" negotiations with DOE. As an organization which attended the NRC/DOE staff negotiations concerning modification of the DOE site selection guidelines in the spring of 1984, we believe an independent analysis and statement of position, prior to final issuance by NRC, is essential if any semblance of NRC independence is to be assured. In the case of the guidelines example, we do not believe that NRC staff independence was effectively preserved.

Lastly, the NRC raises the question of the NHPA schedule and implies that a 90-day comment period, and period for NRC response

to comment, would substantially interfere with the DOE's ability to comply with the NWPA schedule. We do not believe that this limited comment period, which addresses the adequacy of DOE's site characterization activities and thus the ability of DOE to meet all subsequent milestones, would impose such a delay.

The NWPA schedule, such as it is, is a variable process which DOE is supposed to articulate in its Mission Plan (under Sec. 301) and in its Project Decision Schedule (under Sec. 114(e)). The schedule is not a rigid one and the Act provides for extensions of timetables including those imposed by the Project Decision Schedule.

DOE has demonstrated its own indifference to the NWPA schedule in numerous ways. For example, Sec. 301(b) requires the submission of a final mission plan, to guide establishment of the overall program schedule, within 17 months of enactment or by July 1984. DOE has missed this deadline and is expected to be almost a year late in issuing this critical document. In another example, DOE essentially withheld issuance of its final site selection guidelines for five months, approximately 150 days, after NRC published its concurrence in the Federal Register. We do not believe that the integrity of NRC's high-level waste regulatory program nor the rights of public, states and Indian tribes to review and comment should be compromised to make up delays in DOE's schedule.

In any event, NRC's responsibilities and authority to protect public health and safety and the environment are insulated from the schedule. Among other considerations we refer the Commission to the colloquy between Rep. Swift and Rep. Udall during final House consideration of the NWPA on December 20, 1982. The colloquy states in part,

"By setting dates in this bill for DOE and NRC decisions we are setting statutory goals for the repository activities authorized in this legislation. Nothing in this bill, including the establishment of decision dates, is inconsistent with the statutory responsibilities of the Nuclear Regulatory Commission to protect the public health and safety and the environment."  
(Cong. Record, December 20, 1982, p. H 10523)

Consequently, the NWPA "schedule" does not justify deletion of the draft SCA requirement. NRC should also establish a notice and comment process for the semiannual site characterization reports (proposed Sec. 60.18(g)/current Sec. 60.11(g)) along the lines of the comments allowed on the SCA. This would provide all parties with an opportunity to bring issues to the Commission's attention involving ongoing site characterization activities at the same time the Commission was conducting its review.

## Timing of Site Characterization Plan at Issue

NRC correctly notes that the NWPA contemplates a number of steps in site selection and nomination which will precede the point at which a site characterization plan is to be submitted to NRC. Under the current Part 60, DOE is to submit its site characterization report "...as early as possible after commencement of planning for a particular geologic repository operations area." NRC implies that this point in time is dramatically different from that now required by the NWPA and doesn't help the matter by leaving out of the text the added distinction that the planning is specifically for "a particular geologic repository operations area." This misleading omission occurs twice, once in the NRC's discussion of changes to the site characterization report(50 FR 2582) and again concerning the characterization analysis(50 FR 2584). By so doing, NRC distorts the actual point in time originally envisioned in the current regulations for submission of the report and makes it appear that the current version of Part 60 requires submission at a substantially earlier period of time than the NWPA.

The definition of a "geologic repository operations area" is,

"...an HLW facility that is part of a geologic repository including both surface and subsurface areas, where waste handling activities are conducted."(Sec. 60.2(i))

NRC implies in the proposed rule(50 FR 2583-2584) that under the NWPA framework the submission of a site characterization report comes at a later point in the process, after extensive data gathering and agency interaction, than originally contemplated in Part 60. Examination of DOE's timeline for repository development in the April, 1984 Draft Mission Plan for the Civilian Radioactive Waste Management Program(see p. 3-A-39, Vol. I and pp. 2-22 to 2-26) indicates that planning for a particular repository operations area at a particular candidate site cannot begin until the site specific conceptual design stage. As DOE notes,

"The conceptual designs for repositories in basalt, salt, and tuff are in different stages of development. For salt, several generic designs are available for use. However, since specific sites have not been selected, site-specific conceptual designs will not commence until FY 85. For basalt, the description of the site-specific design system has been published and an up-dated complete conceptual design will be completed in FY 86. Preliminary repository concepts have been developed for tuff, a full conceptual design report planned for FY 85."(Mission Plan, Vol. II, p. 2-26)  
(Emphasis added)

We question whether this "planning" for a particular repository operations area, as distinct from site screening based upon conceptual design, occurs at a later point in time

than contemplated in the current version of Part 60. As noted in these comments, the current version of Part 60 contemplated that DOE would conduct a site selection process and complete an environmental impact statement on its proposed site characterization activities which would include that consideration of that site selection process. It does not appear to us that the current DOE program, in apparent compliance with the NWPA, varies substantially from that contemplated by the NRC in promulgating the current version of Part 60.

NRC has grossly exaggerated the impact of the NWPA on the DOE repository development process over that contemplated by the current Part 60. That the NWPA requires submission of the site characterization reports prior to characterization shaft sinking is simply not that different from current requirements. The fact that DOE's site screening process is more visible does not alter the principal requirement that it have a particular site before it can plan for a particular repository operations area.

Furthermore, the question of how many days, weeks, months, or procedural steps prior to sinking the shaft DOE should submit the plan is still at issue. NRC cannot, of course, simply accept the strict letter of the NWPA that DOE submit the plan the day before it begins drilling the shaft. The NRC staff, we should all agree, needs a significant period of time to review the plan prior to shaft sinking. The blanket adoption of NWPA language, in the proposed Sec. 60.16, that DOE submit the plan before sinking the shafts does not, in our view, provide ample delineation of when the plan should be submitted. It does not assure that it will be submitted at a point in the process which will assure time for NRC review prior to shaft sinking.

In its zeal to revise Part 60, NRC has made far too much of the requirement in the NWPA that DOE submit a characterization plan prior to sinking a shaft. The NWPA requirement is not substantially different from that contemplated by the current Part 60 and can just as readily be seen as a stricture on DOE that it not proceed with any aspect of site characterization, including shaft sinking, without submitting such a plan. NRC's proposed changes to Sec. 60.16 are not adequate to assure timely review by NRC of the plan prior to shaft sinking.

Likewise, the NRC's arguments that substantially more public and agency interaction and site screening are required by the NWPA prior to submission of the plan than contemplated by NRC are also exaggerated and not substantively different than contemplated in the current regulations. Therefore, the "scheduling" of the site characterization plan in the NWPA is not a basis for deleting the draft SCA requirement.

#### Procedural Agreement Cannot Substitute For Statutory Authority

The proposed rule is heavily dependent upon the Procedural Agreement between DOE and NRC as a basis for changing Part 60 and for imposing new procedures, such as review of the EA's. While

we cannot object to the Procedural Agreement as a means of implementing the Commission's regulatory authority vis-a-vis the DOE high-level waste program, the Agreement cannot substitute for statutory authority or even for regulations implementing that authority. The Procedural Agreement should be based upon Part 60 and not the reverse. NRC either has authority in this area or it does not and oblique arguments about the need for early identification of licensing issues hardly constitutes a basis for future interpretation of Part 60 and future Commission actions.

As stated earlier, we do not believe that the NWPA subordinated any prior NRC authority in this area and clearly intends to create an independent regulatory role for NRC. We point out that the current regulations, 10 CFR Part 60 were promulgated February 25, 1981, before any congressional action was taken on nuclear waste legislation in the 97th Congress which enacted the NWPA. All relevant committees were mindful of the regulations and in many cases central elements of the regulations were incorporated into the legislation as the NRC notes. We conclude that Congress essentially concurred in the NRC regulatory scheme as provided in the current rule.

#### Treatment of Defense Waste is Illogical and Inadequate

Although the NWPA presumes that defense and commercial high-level wastes will be commingled and placed in the same repositories, Sec. 8 of the Act provides for a Presidential exemption. As the NRC is no doubt aware, DOE has also proposed that some high-level wastes that are not "easily retrievable" be disposed of in a manner other than in geologic repositories. This policy is articulated in "scoping notice" for DOE's environmental impact statement (48 FR 14029, April 1, 1983) and in the draft DOE report prepared in support of the Sec. 8 decision (DOE/DP-0020(Draft)) "An Evaluation of Commercial Repository Capacity for the Disposal of Defense High-Level Waste" July, 1984). A provision is also incorporated in the 4th Working Draft of the final EPA high-level waste standards (May 21, 1984) providing for an exemption for disposal of certain high-level waste from defense activities from the EPA geologic disposal standards. Consequently, we believe that it is especially important that Part 60 explicitly apply to defense waste disposal.

Defense waste disposal outside of the NWPA, as noted by NRC, would not occur in the same manner as commercial waste. The step-by-step procedures in the NWPA which NRC cites as a basis for alteration of Part 60, including the site nomination process, would be absent in the development of defense facility. In point of fact, the process would be virtually identical to that envisioned by NRC when the current rule was promulgated, with the exception of the additional state and tribal consultation and cooperation requirements provided in Sec. 101 of the NWPA.

Logic would dictate that in the case of defense waste, where no NWPA changes occur in the DOE repository siting and

development process, Part 60 should remain unchanged. Instead, NRC concludes that it could "...still effectively discharge its health and safety responsibilities..." if the proposed NWPA-based regulations were applied. NRC does point out that this would not hold for NEPA-related responsibilities(50 FR 2568), but the only change NRC proposes is in the contents of the Site Characterization Report. No other changes from the proposed regulations, such as retention of the draft SCA, would be provided.

This proposed "fix" whereby NWPA-based changes would apply to a non-NWPA defense waste repository is wholly inadequate. NRC is simply proposing, apparently out of convenience, to apply inappropriate regulations to defense repositories; regulations NRC argues in the proposed rule must be substantively different from those currently applicable to defense waste facilities. Given the additional institutional strictures on defense activities, such as limitation on the access to early information about waste forms, since DOE is self-regulating, we are doubtful that the current Part 60 is adequate to provide timely information to NRC and to other parties. Application of the proposed regulations to defense facilities would only limit further the ability of NRC and other parties to gain timely information and participate effectively in the process.

#### Subpart C Changes Are Also Extreme and Unsupported

NRC argues that the NWPA has now required DOE to provide states and Indian tribes with full rights of consultation and cooperation and consequently the Commission's original concerns, expressed in Part 60, have been largely alleviated. What is not stated here, and should be, is that the Commission's own authority to consult with state governments and Indian tribes is substantially unaltered by the NWPA. For example, Sec. 117(c) which authorizes DOE to enter into written agreements with states and Indian tribes contains a specific caveat that they shall not affect the authority of the Commission. While we recognize that NRC has limited resources and may wish to limit its assistance to states and Indian tribes, the changes in Subpart C are unnecessary and unsubstantiated by the NWPA.

The participation provisions of Subpart C appear to be triggered at different points in the site selection process. Information, to be provided under Sec. 60.61, is triggered by the submission of a site characterization plan(see Sec. 60.61(b)). Consultation in site review is triggered by Presidential approval of a site for characterization under Sec. 60.62.

In both cases, it appears to us that the Commission is withholding information and consultation until a fairly late stage of the site selection process. By the time the SCP is submitted, DOE and NRC will have already begun site specific technical meetings will have conducted lengthy site selection activities. Because the amount of time which elapses between nomination and submission of the SCP is expected to be only a

matter of months, it would seem realistic to allow states to begin formal information exchanges and consultation at a minimum at the point when NRC and DOE technical exchanges begin.

Consultation with NRC should occur as early as practicable, probably at the point when a state is notified that it is a "potentially acceptable site" under Sec. 116 or when preliminary investigations are begun for a defense repository under Sec. 101 of the NWPA.

### Conclusion

On February 25, 1983, NRC promulgated standards governing the procedures for licensing geologic repositories (46 FR 13971-13987). NRC now proposes to revise those regulations. We believe that NRC has the burden of demonstrating why those regulations should be revised in any substantive manner. NRC has not demonstrated a legal or evidentiary basis for the proposed changes, which include the arbitrary suspension of key elements of the current regulations.

NRC's principal claim for the changes rests upon an exaggerated and misdirected interpretation of the NWPA which it reads as requiring major alterations in the DOE program not contemplated in the original regulations. Contrary to NRC's view, the changes required by the NWPA are not substantively different from those originally contemplated in the current regulations and do not require the magnitude of changes in NRC regulations which the NRC proposes. While minor corrections may be necessary to conform Part 60 to the NWPA, NRC's proposed rule far exceeds the degree of conformance appropriate.

The changes NRC proposes would drastically restrict the opportunity to review and comment on NRC staff determinations relating to the regulation of repositories. NRC would also arbitrarily suspend those aspects of the current regulations related to NEPA. NRC is currently reviewing the DOE's environmental assessments, which by NRC's admission contain the NEPA-related elements embodied in the current regulations, but is not considering those elements in its review.

NRC's comments on the EA's are expected to be provided to DOE by the close of the DOE public comment period on March 20, 1985. Consequently, NRC has effectively implemented the proposed rules related to early site review prior to their final promulgation. NRC has also suspended certain requirements of Part 60, especially those related to NEPA, without notice. We believe this raises critical questions concerning NRC's possible violation of the Administrative Procedures Act.

OCT 10 1984

MEMORANDUM FOR: Richard E. Cunningham, Director  
 Division of Fuel Cycle, NMSS

FROM: Robert E. Browning, Director  
 Division of Waste Management, NMSS

SUBJECT: ROLE, SCOPE, AND ISSUES IN ENVIRONMENTAL  
 ASSESSMENT REVIEW

As you requested in your memorandum of August 30, 1984, on participating in the October 12 meeting on transportation in Colorado, this memorandum discusses the role and scope of the NRC review of DOE's Environmental Assessments (EA's) and issues for the candidate repositories. The discussion of the role and scope is from our EA Review Plan which has been developed over the last several months and is now undergoing management review. We will advise you of any changes that occur before the October 12 meeting.

ROLE

The information presented and referenced by the EA's will contain data, interpretations, and assessments available to date on each of the potential repository sites being considered by DOE for nomination. This information is important to NRC reviews for prelicensing (Site Characterization Plans (SCP's)), licensing (License Application for construction authorization (LA)), and adopting to the extent practicable the Environmental Impact Statement (EIS) prepared by DOE.

The NWPA does not require NRC review and comment on EA's or to otherwise participate in the nomination process beyond the Commission concurring on the siting guidelines. It is nevertheless the intention of the NRC to review and comment on the EA's (similar to other pertinent technical documents) in order to assess DOE's application of the siting guidelines. According to the siting guidelines, DOE will make findings in its EA's with respect to qualifying, disqualifying, favorable and adverse conditions that are presented in the guidelines. The NRC staff will review these findings and provide to DOE its views on the data, interpretations, and assessments that support DOE's findings. The staff will also comment on any potential licensing or EIS issue that DOE should consider in its nomination decision. Furthermore, in accordance with the NRC/DOE Procedural Agreement (Enclosure 1), comments on the EA's are a useful mechanism for the NRC staff to identify potential licensing and EIS issues that may be anticipated and that may need to be addressed in DOE's activities during site characterization.

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Because the statute omits any reference to NRC in connection with the EA's or the nomination process, the NRC staff will not comment on DOE's judgment regarding the relative merits of one site against another; this responsibility lies with the DOE. The judgments DOE must make in comparing sites involve an intertwining of "technical judgments" (e.g., thermo-mechanical response of the host rock) and "value judgments" (e.g., trade-offs between potential effects on national parks as opposed to prime agricultural land use). Rendering value judgments on the relative merits of various sites is clearly the responsibility of the DOE during the screening process. This is not to say that the NRC staff would be silent on safety and substantive environmental concerns. However, in the absence of such concerns, the responsibility for weighing the relative merits of one site against another is DOE's.

The staff's decision not to comment on the relative merits of sites is consistent with the Commission's policy under the recently amended final rule, Licensing and Regulatory Policy and Procedures for Environmental Protection 10 CFR Part 51 (49FR9352, March 12, 1984). The statement of considerations in this final rule states, "As an independent regulatory agency, the NRC does not select sites or designs or participate with the applicant in selecting proposed sites or designs."

More specifically, NRC's review of the draft EA's has two general objectives which relate to NRC's responsibilities in prelicensing/licensing (i.e., safety evaluations) and adopting the EIS, namely:

- (1) Prelicensing/licensing: The NRC staff will identify and review potential licensing issues and associated data, interpretations, and performance assessments which may be important during site characterization, that might result in licensing problems and which should be addressed by DOE in the EA's.
- (2) Adopting the EIS: The NRC staff will identify and review potential EIS issues and associated data interpretations and assessments that might result in the NRC's being unable to adopt DOE's EIS and which should be addressed by DOE in the EA's.

The EA's, which follow the siting guidelines and NHPA requirements, will be somewhat complex in their structure; however, NRC's review responsibility and approach is simple. That is, for each draft EA submitted by DOE, NRC will review the findings and conclusions presented - to the extent they bear upon the foregoing responsibilities - and independently determine if they are substantiated. NRC will use this evaluation as a basis for identifying potential licensing issues for timely staff resolution.

OFFICE							
NAME							
DATE							

SCOPE

The following criteria define how the data, interpretations, and assessments that DOE used in applying the siting guidelines to the EA items in Enclosure 2 will be reviewed by NRC.

- (1) Adequate substantiation of assessments, interpretations, conclusions and findings.
  - (a) Adequate consideration of available data.
  - (b) Adequate consideration of alternative interpretations, assumptions, or performance assessments.
  - (c) Adequate consideration of uncertainties resulting from all sources including data collection, analyses, interpretations, and performance assessments.
  - (d) Internal consistency of information including data, interpretations, assumptions, and methods of analysis and evaluation.
  - (e) Adequate documentation in EA or references to support interpretations, assumptions, conclusions.
- (2) Potential licensing and EIS issues identified and adequately considered.

As far as issues that are likely to arise at the October 12th meeting, our feeling is they will be related to transportation of waste and spent fuel similar to those discussed at the meeting in Columbus, Ohio on August 1, 1984. The waste transportation issues most commonly identified are safety, routing (especially weather and grades on I-70 in Colorado), routing models and methodology (use of site specific and corridor state specific data), emergency responses, institutional responsibilities, impact on tourism and traffic (Enclosure 3). The Policy and Program Control Branch is currently preparing a paper on transportation issues in high level waste which they will forward to you as soon as it is available. If my staff can be of further assistance contact Bill Lilley of my staff.

Original Signed by  
Robert E. Browning

Robert E. Browning, Director  
Division of Waste Management, NMSS

Enclosures:

- 1. NRC/DOE Procedural Agreement
- 2. NRC's EA Review
- 3. Rocky Mountain News

\*\*\*\*SEE PREVIOUS CONCURRENCE\*

OFFICE	WMRP*	WMRP*	WMRP/C	WMP	WMP		
SURNAME	BLTTey/cj	RBoyTe	WMT/ter	JOBunting	REBrowning		
DATE	10/ /84	10/ /84	10/3/84	10/9/84	10/10/84		

then sent to the IAEA Senior Advisory Group which reviews and modifies as necessary the drafts of all codes and guides prior to their being forwarded to the IAEA Secretariat and thence to the IAEA Member States for comments. Taking into account the comments received from the Member States, the Senior Advisory Group then modifies the draft as necessary to reach agreement before forwarding it to the IAEA Director General with a recommendation that it be accepted.

As part of this program, Safety Guide SG-011, "Operational Management of Radioactive Effluents and Wastes Arising in Nuclear Power Plants," has been developed. The working group consisting of Mr. E. Hladky from Czechoslovakia; Mr. A. Higashi from Japan; Mr. A. B. Fleishman from the United Kingdom; and Mr. L. C. Oyen (Sargent and Lundy Engineers) from the U.S.A., developed the initial draft of this guide from an IAEA collation. This draft was subsequently modified by the IAEA Technical Review Committee for Operation, and we are now soliciting public comment on a modified draft (Rev. 2, dated June 24, 1983). Comments received by the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, by October 10, 1983, will be particularly useful to the U.S. representatives to the Technical Review Committee and the Senior Advisory Group in developing their positions on its adequacy prior to their next IAEA meetings.

Single copies of this draft Safety Guide may be obtained by a written request to the Director, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

(5 U.S.C. 522(a))

Dated at Washington, D.C. this 19th day of August 1983.

For the Nuclear Regulatory Commission,  
Robert B. Misogoe,  
Director, Office of Nuclear Regulatory Research.

(FR Doc. 83-2277 Filed 8-24-83; 8:58 am)  
BILLING CODE 7550-01-0

### **NRC/DOE Procedural Agreement**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of NRC/DOE Procedural Agreement.

**SUMMARY:** The Nuclear Regulatory Commission and the Department of Energy have signed a Procedural Agreement identifying guiding principles

for interface during site investigation and site characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982. The text of this agreement is published below.

**FOR FURTHER INFORMATION CONTACT:**  
Mr. Robert E. Browning, Acting Director, Division of Waste Management, Nuclear Regulatory Commission, Mail Stop 623-SS, Washington, DC 20555; (301) 427-4200.

Dated at Silver Spring, Maryland, this 16th day of August 1983.

For the Nuclear Regulatory Commission,  
Joseph O. Bunting,  
Chief, Licensing Process and Integration Branch, Division of Waste Management.

### **Procedural Agreement Between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy Identifying Guiding Principles for Interface During Site Investigation and Site Characterization**

This Procedural Agreement outlines procedures for consultation and exchange of information which the Commission (NRC) and the Department (DOE) will observe in connection with the characterization of sites for a geologic repository under the Nuclear Waste Policy Act of 1982. 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 Nuclear Waste Policy Act (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 staff 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 on 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 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.

#### **1. NRC On-Site Representatives**

As early as practicable, following area phase field work, NRC on-site representatives will be stationed at each 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. Meetings**

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 meetings periodically as provided in this section. A written report agreed to by both DOE and NRC will be prepared for each meeting including agreements reached.

a. Technical meetings will be held between DOE and NRC technical 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.

b. Periodic management meetings will be held at the site-specific project level whenever necessary, but at least quarterly, to review the summary results of the technical meetings; to review the status of outstanding concerns and issues; 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 generic guidance is advisable and necessary for NRC to prepare. Unresolved management issues will be promptly elevated to upper management for resolution.

c. Early technical meetings will be scheduled to discuss written NRC comments on DOE documents such as Site Characterization 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.

d. 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.

e. Schedules of activities pertaining to technical meetings will be made publicly available. Potential host States and affected Indian tribes will be notified and invited to attend technical meetings covered in this section (Section 2, Meetings). The notification will be given on a timely basis by the DOE. These technical meetings will be open meetings 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 the DOE (or DOE contractor) quality assurance checks that are inherent in determining that the data has been obtained and documented properly.

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

### 4. Site Specific Samples

Consistent with mutually agreed on procedures, DOE will provide NRC with site specific samples to be used by NRC for independent analysis and valuation.

### 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

Project specific agreements to implement the above principles will be negotiated within 120 days of the time this agreement is entered into. These project specific agreements will be tailored to the specific projects to reflect the differences in sites and project organizations.

7. 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.

Dated: June 27, 1983.

Robert L. Morgan,

Project Director, Nuclear Waste Policy Act  
Project Office, U.S. Department of Energy.

Dated: June 17, 1983.

John G. Davis,

Director, Office of Nuclear Material Safety  
and Safeguards, U.S. Nuclear Regulatory  
Commission.

(FR Doc. 83-2378 Filed 8-24-83; 845 am)

BILLING CODE 7930-01-0

[Docket No. 83-309; CJ-83-21]

Maine Yankee Atomic Power Co.  
(Maine Yankee Atomic Power Station);  
Memorandum and Order

The Commission has considered and affirms the Director's Decision, DD-83-3, issued February 14, 1983 under 10 CFR 2.206.<sup>1</sup> The Decision denied the October 20, 1982 petition of Safe Power for Maine, Emil G. Garrett, John B. Green and John Jerabek (collectively "Safe Power") for action pursuant to 10 CFR 2.206. Safe Power sought an order to show cause why Maine Yankee Atomic Power Company ("Maine Yankee" or "licensee") should not be ordered to discontinue operation of its nuclear power plant at Wiscasset, Maine, in light of Safe Power's allegations of Maine Yankee's financial incapability to operate the Wiscasset facility safely and dispose of spent fuel now stored there and to be generated during the remainder of the licensing period. The Commission has concluded that denial of this petition lay within the Director's discretion but notes that subsequent developments provide additional justification for the Director's decision. Accordingly, rather than simply declining to review the Director's decision the Commission is issuing the memorandum and order to enlarge the discussion of the issues raised by the petition.

In its petition for a show cause order Safe Power alleged a number of circumstances indicating "poor financial condition of Maine Yankee".<sup>2</sup> Safe

<sup>1</sup> By successive orders of the Secretary pursuant to 10 CFR 2.772, the time in which the Commission may take review of the Director's Decision was extended to July 21, 1983.

<sup>2</sup> These asserted circumstances include: (1) Use of funds obtained through pledge of the company's stock of nuclear fuel for purposes other than purchase, remanufacturing and handling of nuclear fuel; (2) need to ask for early payment from Central Maine Power Company to meet Maine Yankee's daily cash requirement because its unsecured borrowing limit has been reached; (3) exhaustion of all of Maine Yankee's established sources of capital with the exception of infusion of additional common equity contributions by its sponsors; and (4) need for "sponsor guarantees" to continue the fuel financing.

Power requested that the Commission halt operation of Maine Yankee until the license "has demonstrated that it has adequate financial backing and adequate financial support . . . to raise capital requirement to continue operation, to make and changes or capital investments required by the NRC, and to provide for the funding of its shutdown and disposal of spent fuel at the end of its licensed term." Safe Power also asked that the Commission determine what amounts Maine Yankee should collect to provide for decommissioning and disposal of spent fuel and order the creation of a trust fund in which these monies would accumulate until needed.

In denying Safe Power's petition the Director correctly observed that the Commission's concern with financial problems of a licensee is limited to the relation which those problems may have to the protection of public health and safety.<sup>3</sup> Allegations about financial difficulties at an operating facility are not by themselves a sufficient basis for action to restrict operations. In the Commission rulemaking, cited by the Director, which eliminated the financial qualification review for electric utilities, 47 F.R. 13750, the Commission noted the absence of evidence that financial problems are inevitably linked with corner-cutting on safety.<sup>4</sup> Thus, even had the Commission retained its financial qualifications review requirements, a showing the Maine Yankee was undergoing financial difficulties would not by itself require that the Commission halt operations at that plant.<sup>5</sup> On the other hand,

<sup>3</sup> Recently in an opinion issued subsequent to the Director's decision the Supreme Court took note of this limitation on the Commission's concern with economics.

The Nuclear Regulatory Commission (NRC) does not purport to exercise its authority based on economic considerations. 10 CFR 84, and has recently repealed its regulations concerning the financial qualifications and capabilities of a utility proposing to construct and operate a nuclear power plant. 47 F.R. 13731. In its notice of rule repeal, the NRC stated that utility financial qualifications are only of concern to the NRC if related to the public health and safety.

*Pacific Gas & Electric Co. v. State Energy Resources Conservation and Development Commission*, \_\_\_\_\_ U.S. \_\_\_\_\_, 73 L.Ed. 2d 732, 76 (1983).

<sup>4</sup> The Commission's rule is currently under review in the D.C. Circuit in *New England Coalition on Nuclear Pollution v. NRC*, No. 82-1381.

<sup>5</sup> Under Section 188 of the Atomic Energy Act the Commission may revoke a license when a condition exists that would have permitted the Commission to deny the license in the first instance, but it is not required to do so, especially where means short of license revocation are available to provide continued assurance of public health and safety.

ENCLOSURE 2

SCOPE OF NRC'S EA REVIEW

EA ITEMS IDENTIFIED IN SITING GUIDELINES

NRC REVIEW

- |   |  |
|---|--|
| 1. Decision Process for Nomination                              | ◦ None (addressed by Commission concurrence on siting guidelines)  |
| 2. Site Qualification/Disqualification                          | ◦ DOE findings with respect to the guidelines<br>◦ Technical evaluation used to support findings<br>◦ Data, interpretations, performance assessments supporting technical evaluations  |
| 3. Geohydrologic Setting Determination                          | ◦ Technical evaluations used to determine the geohydrologic settings<br>◦ Data, interpretations, performance assessments supporting technical evaluations  |
| 4. Comparative Evaluation of Sites Within Geohydrologic Setting | ◦ None regarding conclusions or methodology<br>◦ Substantiation of conclusions   |
| 5. Suitability for Development of Repository                    | ◦ Suitability conclusion<br>◦ DOE findings with respect to the appropriate guidelines<br>◦ Technical evaluations used to support findings<br>◦ Data, interpretations, performance assessments supporting technical evaluations |

ENCLOSURE 2 (Cont'd)

SCOPE OF NRC'S EA REVIEW

EA ITEMS IDENTIFIED IN SITING GUIDELINES

NRC REVIEW

6. Suitability for Characterization

- Suitability conclusion
- DOE findings with respect to the appropriate guidelines
- Technical evaluations used to support findings
- Data, interpretations, performance assessments supporting technical evaluations

7. Comparative Evaluation of Site Against All Other Sites

- None regarding the relative merits of one site against another
- Substantiation of conclusions

8. Effects of Site Characterization

◦ Public Health and Safety (Radiological)

- Proposed site characterization activities
- Potential effects on repository performance
- Data, interpretations supporting above

◦ Public Health and Safety (Non-Radiological)

- None

◦ Environment

- DOE findings with respect to the appropriate guidelines
- Technical evaluations used to support findings

ENCLOSURE 2 (Cont'd)

SCOPE OF NRC'S EA REVIEW

EA ITEMS IDENTIFIED IN SITING GUIDELINES

NRC REVIEW

9. Alternative Activities for Site Characterization to Avoid Effects in No. 8 above

° Alternative plans for site characterization activities

10. Regional and Local Impacts of Repository

° Proposed repository facilities and operations

° Effects on repository performance, environment, transportation and socioeconomics

° Data, interpretations supporting above

OTHER EA ITEMS

11. Descriptions of the Site and Region

° Data, interpretations, performance assessments

12. Descriptions of the Repository Design

° Preliminary designs

° Data, interpretations, performance assessments supporting preliminary designs

# State a likely nuclear thoroughfare

By SUE LINDSAY  
Rocky Mountain News Staff Writer

Thousands of trucks carrying deadly loads of spent nuclear fuel, each 10 times more radioactive than the bomb dropped on Hiroshima, may roll through Colorado by the end of the century posing a potential danger that has so far drawn a slow reaction from state officials.

The issue centers around whether the federal government will locate its high-level radioactive waste dump in the West. Many experts believe it is likely.

If one of three proposed Western sites is chosen, Colorado could become the hub of rail and highway traffic to the dump from the East, where most of the waste from nuclear reactors is produced.

According to some federal projections, the major transportation corridor would be Interstate 70, which passes through Denver and across the Rocky Mountains.

One federal study estimates that by 2000, a tractor-trailer truck carrying nearly a half-ton of highly radioactive waste would arrive at the dump every 90 minutes, 24 hours a day, every day, transforming many interstate highways into nuclear thoroughfares.

Earlier this month a truck carrying Navy torpedoes overturned at the interchange of I-70 and I-25 in Denver, closing both highways, causing the largest traffic jam in Denver's history and underscoring how vulnerable the city is to accidents involving hazardous materials.

High volumes of spent nuclear fuel, the most radioactive substance on Earth, probably won't be on the road before 2000. That's how long it will take to select and construct a dump.

But decisions about where to locate the dump, which could have a major impact on Colorado, are under active consideration.

"The decisions are being made now," said Fred Millar of the Environmental Policy Institute in Washington. "Colorado will lose its say if it doesn't get involved now."

"Once the site is selected, reversing the federally generated momentum will be practically impossible," Millar warned.

Until recently, the topic has attracted little concern from state and local officials.

"I don't think the state generally is aware of some of the planning that's going on at the federal level which could result in higher use of the I-70 corridor for transportation of spent nuclear fuel," said state Sen. Tom Glass, D-Frisco, whose mountainous district contains the most treacherous stretches of that route.

"This highway presents such unique hazards itself under normal conditions, from the Mousetrap at rush hour to the Eisenhower tunnel to a runaway truck in Vail Pass," said Glass. "This is a tough road by any standard."

Denver and Colorado officials contend that the state still has time to make its influence felt.

"It's early enough in the process that if we act soon, we can respond," said Tony Massaro, Denver's director of environmental affairs. "DOE will narrow the list down to three sites in February. If we wait much beyond that, we will have some serious problems."

Casks being used to ship the waste are designed to meet standards set 23 years ago. Their ability to withstand crashes under current highway conditions is being seriously questioned.

But the Department of Energy says people are becoming needlessly alarmed.

News Staff Reports, Inc.  
WASHINGTON, D.C. 20005

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DENVER, COLORADO  
ROCKY MOUNTAIN NEWS

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"We know there has been a lot of activism in the area which seems to frighten people," said Roy Garrison, DOE's transportation chief. "But these shipments have been moved for 40 years without ever any death or injury. It is a fact there have been no problems other than conventional accidents."

Garrison said the increased volume of shipments won't threaten the public, he contends that the shipping casks are indestructible.

"Other hazardous materials don't have the kind of record we're talking about here," Garrison said. "Gasoline is considered an acceptable risk and it kills a lot of people every year."

But others say public concern is justified.

"This stuff isn't acid or gasoline, it's radioactive waste. And there isn't a high level nuclear disposal site that works anywhere in the world right now," said Steve Frishman, general counsel for high-level radioactive waste with the Texas governor's office.

So far, the nation's 76 nuclear reactors have generated 25,000 tons of waste. It's stored in pools of water at the reactor sites. But they are filling up.

Nine sites for nuclear waste dumps have been proposed.

The three in the West are near Moab, Utah, on the border of Canyonlands National Park; on the U.S. government's Hanford reservation near Richland, Wash.; and at the Nevada test site 55 miles northwest of Las Vegas.

It's also possible that a temporary site may be established at a federal installation in Idaho Falls, Idaho.

The Nuclear Waste Policy Act of 1982 requires that three possible sites be selected early next year. A final site is to be chosen by 1987 and opened in 1993. But the legislation is fraught with loopholes and contradictions which open the door for years of challenge.

Although most nuclear waste is in the East, Millar and others bet the site will be in the West, where populations nearest the proposed sites are lower, have less political influence and are more supportive of the nuclear industry.

"Whether it's the MX missile or nuclear waste disposal, the West is picked on for sites because there's a lot of room out here and we don't have the political clout we need to prohibit it," said Rep. Ray Kogovsek, D-Colo.

"In Utah, 86 percent of the land is owned by the federal government. If the government wants to deposit waste on land they own, sooner or later they are going to do it."

But Sen. Gary Hart, D-Colo., cautioned that the not-in-my-back yard philosophy won't solve the problem.

"Frankly, as an American and an elected official, I think it is irresponsible for people to say not in the West, or East or South or any particular state. This is a national problem.

"Technology, rather than politics, has to prevail," he said. "This stuff has to be put not in the place which has the least political muscle, but where it is the safest. And that decision will be made by the president of the United States."

Few waste shipments have traveled the nation's highways or railways in recent years because there is no national dump. From 1979 to 1981, an average of 96 commercial and experimental shipments of highly radioactive waste were transported annually.

The number of shipments would increase significantly once a site is built.

See NUCLEAR, page 24

Continued from page 8

The Department of Energy estimates that from 350,000 to 450,000 truck shipments or 35,000 to 45,000 rail shipments would be necessary to transport the waste produced by the currently operating nuclear reactors over their 30-year lifetimes.

Up to 120 trucks would be on the road every day by the year 2000, according to a 1981 report by the National Academy of Science's National Research Council.

"Only one mess up could contaminate the Colorado River or close the economic connection between the Eastern and Western Slopes along I-70 for years," said geologist Roy Young, a consultant to the Sierra Club.

Truck accidents in general, including minor incidents, occur at the rate of one every 400,000 miles, according to DOT.

But the Nuclear Regulatory Commission says the probability of an accident severe enough to break a cask is similar to that of a cask being struck by a meteor — once in several million years.

The casks contain "spent fuel," a somewhat misleading term because it implies that the fuel has lost its power. In fact, it is millions of times more radioactive than fresh fuel.

Fuel that has been irradiated inside a nuclear reactor for several years is considered spent when the enriched uranium it contains no longer fissions properly.

When it is removed, it must be stored under water to cool it and contain the radiation.

Even after an unshielded fuel assembly has been out of a reactor for six months, its temperature exceeds 800 degrees Fahrenheit. Standing one yard away, a person would receive a lethal dose of radiation in 10 seconds.

In an accident, a damaged cask could

release radioactive gases and particles into the air. They could be inhaled or settle on vegetation, soil or water and eventually be ingested. People near a radioactive spill would absorb radiation through the skin or by inhaling it.

Depending on the amount of exposure, the effects can be immediate or latent, such as increased cancers, birth defects or genetic mutations.

In 1980, the NRC estimated there would be nearly 2,500 immediate deaths and even more cancer victims should such a calamity occur at lunch hour in downtown Manhattan.

The prospects of an accident are also deadly for Coloradans. While fewer lives would be lost if an accident occurred on I-70 in the mountains, the impact on Colorado's ski and tourism industry would be devastating.

"Both I-70 and I-76 lead from the East to Denver where a million people are living," said Colorado Port of Entry director Dee Hartman. "Essentially, we have no control over the feds. If they want to bring it through Denver, they will."

Who should respond to such an accident is an open question. An NRC report estimated that a "model state system" would cost roughly \$3.6 million. "States shouldn't have to foot that bill," contends Texas' Frishman.

But federal responsibility for emergency response offers little comfort to Denver.

"They may say you don't need to train local people because their people are always on call, but we saw how well that worked with the torpedo incident," said Rep. Patricia Schroeder, D-Colo., who was highly critical of the government's response to that accident.

Frishman is calling for a study of the risk along various routes. He and others complain that responsibility for safety transport-

ing the waste is being lost in a bureaucratic shuffle.

DOE transportation chief Roy Garrison said his department's policy requires carriers to follow the regulations of the Department of Transportation.

DOT's regulation HM-154 directs nuclear shipments to be transported on interstate highways, taking bypass routes around cities where feasible and available.

DOT's enforcement of other hazardous materials shipping regulations, is not good. For example, the truck carrying torpedes that overturned in Denver should have bypassed the city, but didn't.

More than 200 local and state jurisdictions have banned or restricted the transport of radioactive waste through their communities.

DOT has moved to pre-empt several such ordinances. But resistance continues to build. Michigan passed a law prohibiting transport of nuclear waste in casks which hadn't been physically tested. Since none used in the United States has undergone such tests, the Michigan law effectively bans nuclear shipments.

"The real issue," said Frishman, "is that states need information about transportation so they can respond properly and be involved in the process. Up to now DOE has been unwilling and unable to provide us sufficient information."

Colorado and Denver barely have begun considering restrictive laws aimed at nuclear transport and they have been slow to ask for such information.

"Clearly, Colorado should do what it can to pass strong laws on routing and safety precautions," said Schroeder. "When states have passed laws, the government has said it's been pre-empted. . . . They've used that to keep everybody out of it."

Hart said the Reagan administration had dodged its responsibility to implement the Nuclear Waste Policy Act. "There is plenty of latitude for the states to deal with it," he said. "If the federal agencies wanted this act to work, they would sit down with the states and make it work."

A number of states, including Utah, Nebraska, Wisconsin, Minnesota and Washington, have tried to get mapping information developed for DOE at Oak Ridge National Laboratories in Tennessee.

Up to now, DOE has resisted those efforts. DOE's transportation head Garrison said there is "some movement to accommodate the states' requests."

Colorado hasn't asked for the information. Denver intends to ask the state to make a formal request, said Denver's Massaro.

Leonard Slosky, aide to Gov. Richard D. Lamm said the state is "following the DOE planning process."

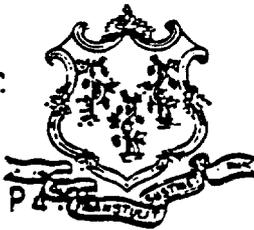
On the mapping question, Slosky said Colorado is "trying to track down that process."

"We need to see what they have and what it means. The current DOE plan says that routes would be selected by commercial shippers. Any model that predicts where shipments would go is of limited utility. We don't know yet if they would go by rail or highway."

Trucks carrying any hazardous products, including radioactive waste, are already prohibited from traveling through the Eisenhower Tunnel on I-70. Instead, they are routed over Loveland Pass, which, Port of Entry director Hartman notes, is treacherous even on a good day.

"So we're having these trucks go over a winding, curving road supposedly because it's safer," Hartman said. "Is that good? I don't really want nuclear waste going over Loveland Pass or the tunnel."

WILLIAM A. O'NEILL  
GOVERNOR



~~CONFIDENTIAL~~  
(50 FR 2579) (4)

STATE OF CONNECTICUT  
EXECUTIVE CHAMBERS  
HARTFORD

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OFFICE OF THE SECRETARY OF STATE  
DOCKETING & SERVICE  
BRANCH

March 12, 1985

Secretary of the Commission  
U.S. Nuclear Regulatory Commission  
Attention: Docketing and Service Branch  
Public Document Room  
1717 H Street, N.W.  
Washington, D.C. 20555

Dear Mr. Secretary:

The State of Connecticut offers the following comments concerning the proposed rule for "Disposal of High-Level Radioactive Waste in Geologic Repositories; Amendments to Licensing Procedures" as published in the January 13, 1985 issue of the Federal Register, Vol. 50, No. 12.

The proposed federal rule appears to restrict the role of the public in determining site suitability of high-level nuclear waste repositories. The proposed rules, which would amend existing procedures, would eliminate the requirement for a draft site characteristic analysis, thereby circumventing early public comment. However, Connecticut's experience with siting locally unwanted land uses (LULU's) has benefitted from generous participation procedures.

The concept of limiting public participation is also contradicted by several recent theories published on this subject, including "Siting Hazardous Waste Facilities" by Dave Morell and Christopher Maggrian (1982; Ballinger Publishing, Cambridge, Mass.), "Siting Hazardous Waste Management Facilities" (1983, the Conservation Foundation, Chemical Manufacturers Association, National Audubon Society); and "Facility Siting and Public Opposition" by Lawrence Bacow, Michael O'Hare, and Debra Sanderson (1983, VanNostrand Rhinehold, New York). These publications stress the point that no siting attempt can be successful, in the sense of minimizing community and personal disruption while assuring a fair and timely decision, unless all parties at interest are afforded access to complete information from the very beginning.

DS10 110  
add. Clark Packard, 113055  
James V. 9603 MMBE  
Edward Regner, 62355

MAR 19 1985

Acknowledged by card.....pd

Secretary to the Commission

March 12, 1985

Page 2

Even though the subject Waste Siting Act does not require that a draft environmental assessment be made available for public comment, the DOE intends to do so according to the Federal Register Notice. If they intend to do so, the regulations should clearly so state. Although the present administration may be sincere in its intent, the intent of future administrations cannot be assumed. Any means to encourage adequate information flow at all stages of such a project will enhance the likelihood of an error free and acceptable decision.

The experience of the Connecticut Siting Council in siting decisions regarding any "unwanted" facility indicates that restrictions on public participation in such decision, disguised as streamlined regulations, prove counterproductive. Any time or money saved early on will almost certainly be lost to more vigorous and effective public opposition and court challenges at later stages of a project. In fact, a recent study by Charles River Associates, a consulting firm in Boston, Massachusetts, indicates that delays late in a construction project are far more costly than those encountered at early stages.

Thank you for this opportunity to review and comment on this proposed rule.

Sincerely,

A handwritten signature in black ink, appearing to read "Will. A. O'Neill", written in a cursive style.

WILLIAM A. O'NEILL  
Governor

Miro M. Todorovich - Executive Director

March 15, 1985

SE2

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Samuel J. Chilk  
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U.S. Nuclear Regulatory Commission  
Washington, DC 20555

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(50 FR 2579)

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Health Physics Society
- Robert E. Munnich  
University of Chicago
- Thomas Pickett  
Univ. of California, Berkeley
- Dwight C. Peltard  
Duke University
- James Rainwater  
Columbus University
- Norman C. Rasmussen  
Mass. Institute of Technology
- Dory Lee Ray  
Energy Consultant
- Glen Seaborg  
Univ. of California, Berkeley
- Malcolm J. Sherman  
State Univ. of NY, Albany
- Edward Teller  
Stanford University
- James A. Van Allen  
University of Iowa
- Alexander von Grottkow  
University of Zurich
- Alvin M. Weinberg  
Oak Ridge Associated Univ.
- Eugene P. Wigner  
Princeton University
- Richard Wilson  
Harvard University
- Werner Wolf  
Yale University

RE: 10 CFR Part 60  
Disposal of High-Level  
Radioactive Waste in  
Geologic Repositories:  
Amendments to Licensing  
Procedures (50 FR 2579,  
January 17, 1985)

Dear Mr. Chilk:

Scientists and Engineers for Secure Energy has reviewed the proposed rule amending licensing procedures for high-level radioactive waste repositories and wishes to commend the Nuclear Regulatory Commission and the Department of Energy for their sensitivity in dealing with this important step in the nuclear fuel cycle.

While the passage of the Nuclear Waste Policy Act of 1982 by Congress established a definite Federal policy for waste disposal, it also presented the Commission with the task of proposing revisions to previously adopted procedures to reflect the provision of the Waste Policy Act and with the opportunity to take into consideration scientific experience gained in the

*Dr. J. O. Coyle  
add. Coyle Pritchard, 113655  
James Wolf, 964 AMNB  
Edward R. Kessler, 60355*

ACKNOWLEDGED BY CARD MAR 19 1985

last three years. SE<sub>2</sub> analyzed the revised procedures with regard to:

- (a) the public's ability to comment;
- (b) the implementation of the Commission's statutory duties; and
- (c) the timely development and implementation of otherwise safe high-level radioactive waste repositories.

We note that public input and review is mandated by the Waste Policy Act and that under the proposed rules the citizens in the states being considered for nomination as repositories will, on an ongoing basis, be given ample opportunity to comment on the proposed plans. In fact, under the NRC/DOE Procedural Agreement, "States and Indian tribes will have an opportunity to be informed routinely concerning the information made available to NRC and NRC's comment thereon and to attend NRC/DOE technical meetings"<sup>1</sup> and further, "to bring their concerns to the attention of the NRC."<sup>2</sup> The Waste Policy Act authorizes DOE to fund a variety of State activities facilitating public review and comment and requires DOE to report on the site characterization

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<sup>1</sup>Federal Register, Vol. 50, No. 12, Thursday, January 17, 1985. Pages 2583-84.

<sup>2</sup>Ibid, page 2584.

activities at least twice a year to the Commission and to State and tribal officials.

The Waste Policy Act places primary responsibility on DOE for investigating the suitability of several areas as waste repositories. We find the procedures enumerated in these proposed rules facilitate timely development of repository sites because they have been designed to allow the investigation, review and comment phases to be carried out concurrently and in parallel rather than consecutively thereby compressing the period of time involved without cutting short local input or jeopardizing the resolution of safety issues.

Seeing meaningful revisions of NRC's procedures as moves toward leaner, better and more efficient government, SE<sub>2</sub> can not agree with Commissioner Asselstine's views because they would at times add a layer of duplication and at others lengthen the process unnecessarily.

Sincerely,

*Miro M. Todorovich*

Miro M. Todorovich

Executive Director