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## Governor's Task Force on High-Level Radioactive Waste

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May 6, 1985

Honorable Nunzio J. Palladino, Chairman  
U.S. Nuclear Regulatory Commission  
1717 H. Street N.W.  
Washington, D.C. 20555

Dear Mr. Palladino:

The State of Minnesota has closely followed the current rulemaking process for amendments to 10 CFR 60 ("Disposal of High-Level Radioactive Waste in Geologic Repositories") and has submitted comments on the preliminary draft of the amendments (August 1, 1984) and on the proposed rule (March 17, 1985). We view this rulemaking with concern because of its effect on state and tribal participation in the repository siting program.

Our initial comments reflected our agreement that adoption of the Nuclear Waste Policy Act necessitated some change in the Commission's licensing provisions. We did not, however, endorse changes that would limit interaction between the Commission and the states and tribes regarding review of the "Site Characterization Plan." Nor did we endorse changes that, coupled with amendments to 10 CFR 2 ("Rules of Practice for Domestic Licensing Proceedings"), would not provide an absolute right of participation in NRC repository licensing proceedings to affected states or tribes. Despite the comments of Minnesota and other states, there has been no significant change in the proposed rule.

Our desire to maintain a high level of state and tribal participation is based, in part, on our favorable experience with the Commission during the siting guidelines concurrence proceedings. We viewed the interaction with the Commission as a positive example of constructive participation that was beneficial to the parties involved, and we were very appreciative of the Commission's willingness to listen and respond to our concerns.

Recognizing the continued value of such interaction, the State of Minnesota requests that the states and tribes be provided an opportunity to directly discuss our views on the proposed 10 CFR 60 amendments with the Commission. Perhaps the best way to accomplish this would be through an informal meeting similar to the roundtable discussion that was arranged for the concurrence proceedings.

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As the repository licensing body, the Commission plays a very unique and important role in the nuclear waste program - that of an independent regulator. These amendments further define that role by altering the relationship between the Commission and the affected parties at several key points in the repository siting process. We believe the changes are significant and we hope that the Commission will react favorably to our request for a meeting.

Sincerely,



Tom Kalitowski  
Chairman, Governor's Task Force on  
High-Level Radioactive Waste

cc: Samuel Chilk, NRC Secretary  
AG  
Task Force  
Affected States and Tribes



CHAIRMAN

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

December 13, 1984

The Honorable Scott M. Matheson  
Governor of Utah  
Salt Lake City, Utah 84114

Dear Governor Matheson:

We have received the comments in your letter of November 6, 1984, on the NRC staff's draft proposed changes to 10 CFR Part 60. The Commission will consider your concerns as well as those of others who have commented on the staff's draft proposed changes. Following Commission deliberation on the version of the proposed rule which has been forwarded to us by the staff, the Commission's proposed rule changes will be published in the Federal Register for public comment, thus providing the opportunity for formal input to the Commission's rulemaking process. The Commission will respond to your comments and others following the public comment period.

We appreciate the interest you have shown in the draft proposed changes to the Commission's procedures for licensing a high-level waste repository and look forward to continued constructive interactions with you and other state representatives regarding the regulation of radioactive waste disposal.

Sincerely,

Original signed by  
Nunzio J. Palladino  
Nunzio J. Palladino

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SCOTT M. MATHESON  
GOVERNOR

STATE OF UTAH  
OFFICE OF THE GOVERNOR  
SALT LAKE CITY

84114

November 6, 1984

The Honorable Nunzio J. Palladino  
Chairman  
U.S. Nuclear Regulatory Commission  
1717 H Street, N.W.  
Washington, D.C. 20555

Dear Chairman Palladino:

After reviewing the Nuclear Regulatory Commission's proposed changes in 10 CFR Part 60, the state of Utah joins Texas and Nevada in expressing its opposition to several aspects of these proposed amendments. If adopted, the amendments could seriously undermine state participation in the site selection and repository licensing processes. Moreover, the proposed amendments unnecessarily curtail the Commission's regulatory oversight of the critical, early stages of repository planning and development.

According to the staff materials accompanying the proposed amendments, the changes in 10 CFR Part 60 are necessary to bring the Commission's licensing procedures into conformity with the Nuclear Waste Policy Act of 1982. Although the state of Utah agrees that some changes in the licensing procedures may be required to better reflect the congressional mandate contained in the Nuclear Waste Policy Act, the state finds the Commission's proposed changes far more extensive than are necessary to eliminate conflicts with the Act. Underlying the Commission's proposed changes is an implicit assumption that Congress intended a lesser role in nuclear waste management for the Nuclear Regulatory Commission when it gave the Department of Energy substantial responsibilities in this area under the Nuclear Waste Policy Act. In view of the extreme importance of the decisions involved in high-level nuclear waste disposal, the state believes there is substantial justification for formal involvement of the Commission in all aspects of repository siting and development. Any resulting duplication of effort should be more than offset by the anticipated benefits from having access to the Nuclear Regulatory Commission's expertise during the vitally important early stages of repository development.

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In addition to its general concerns about the scope of the proposed amendments to 10 CFR Part 60, the state has several specific objections to the proposed changes. First, the state is deeply concerned about the elimination of Section 60.11 and the addition of proposed Section 60.16, which together would eliminate Nuclear Regulation Commission review of the site selection process. Under this proposed change in procedures, the Commission will review less information about proposed repositories, and it will do so at a later point in time. The elimination of Section 60.11 also entails the elimination of one opportunity for affected states to comment on the information contained in the site characterization report. The staff material accompanying the proposed amendments assumes that the public review process set forth in the Nuclear Waste Policy Act will provide an adequate opportunity for state comment. As indicated above, the state does not agree that the Nuclear Waste Policy Act implicitly preempted the Commission's regulations relating to repository licensing. Accordingly, the state finds it desirable to have an opportunity to comment on the draft site characterization report required by current Section 60.11 as well as participating in the public review process provided by the Nuclear Waste Policy Act. In this way, the state can be assured of an ongoing role in the repository siting and development process as well as a continual relationship with both the Department of Energy and the Commission.

The state's second specific concern is closely related to the first. The proposed amendments to Subpart C of 10 CFR Part 60 substantially reduce opportunities for affected states to interact and consult with the Commission. In explanation of this proposed change, the Commission has stated:

Since the concern of the states and affected Indian Tribes will be dealt with primarily under the statutory consultation and cooperation procedures (of NWPA), the Commission has eliminated reference to any consultation and activities by NRC that are more appropriately and directly carried out by DOE under those procedures.

NRC Proposed Rule, Enclosure A at 26.

The state has been frustrated time and again in its efforts to obtain information and other cooperation from the Department of Energy. In view of the Department of Energy's failure to comply with its obligations under the Nuclear Waste Policy Act, the premise for the Commission's deletions from Subpart C is faulty. If the Commission reduces opportunities to interact with it in the licensing process because it is operating under the mistaken assumption that the Department of Energy is already providing full cooperation to affected states, the states may be effectively foreclosed from participating in decisions concerning the repository.

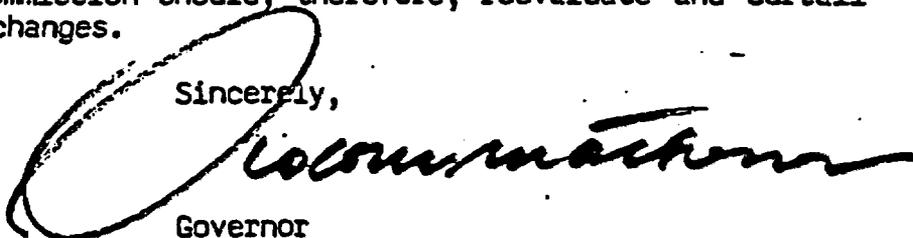
The state's final objection to the proposed amendments relates to funding for state involvement in repository planning. The proposed amendments would eliminate the provision of the current Section 60.62(c) for funding by

The Honorable Nunzi J. Palladino  
November 6, 1984  
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the Nuclear Regulatory Commission of state work in support of license review. Once again, this action is based on the Commission's belief that the Department of Energy is responsible for this aspect of cooperation with affected states. See Nuclear Regulatory Commission Proposed Rule, Enclosure A at 28. The Commission's intention of removing its funding for state involvement in the licensing process is not supported by the state's experience in attempting to obtain funds from the Department of Energy. If the state of Utah's experience with the Department of Energy is representative, there appears to be substantial doubt about the Department's commitment to providing adequate funding for state involvement in repository planning.

In conclusion, the Nuclear Regulatory Commission's proposed amendments to the licensing procedures contained in 10 CFR Part 60 are based on an overly restricted view of the Commission's role in the planning and development of a high-level nuclear waste repository. The amendments also reflect unrealistic assumptions about the adequacy of the Department of Energy's performance of its obligations under the Nuclear Waste Policy Act. To ensure adequate participation by the Commission, the Department of Energy, and affected states, the Commission should, therefore, reevaluate and curtail the extent of its proposed changes.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read "Palladino", is written over the word "Governor".

Governor

SMM:ML:jh

cc: Donald Hodel, Secretary of Energy