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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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providing would include those educational or information services and related actions that are set out in existing § 60.62(d).

The Commission has omitted those portions of existing § 60.62(c) that contemplate Commission funding of State work in support of the license review. In light of the Waste Policy Act, funding of such work to improve the State's capacity to review a license application is a responsibility of DOE and it is to be financed out of the Nuclear Waste Fund. We do not rule out the possibility that the NRC may contract with State governments on occasion for particular services that we may require in order to be able to discharge our statutory responsibilities effectively. The execution of such contracts would be carried out under established procurement procedures and would be subject to applicable limitations with respect to competitive bidding and avoidance of conflicts of interest. See 41 CFR Chapter I (Federal Procurement Regulations). A further reason for handling such contracts under the general procurement regulations rather than Part 60 is that the criteria for approval of proposals (existing § 60.63, proposed § 60.62(d)) would be inappropriate when the Commission's purpose is to acquire services which it needs in discharging its own reviewing functions.

Considering this limitation of the scope of NRC activities under Subpart C, the requirement for gubernatorial approval of a State proposal has been eliminated as being unnecessary. The information required to be included in the proposal has also been modified to conform to the limitation of scope. The Waste Policy Act may have further limited the opportunities for states to receive funding from the NRC; the Commission is of the view that Congress intended that DOE should assume the Federal responsibility for activities of the types described in Sections 116 and 118 and that such activities should be financed out of the Nuclear Waste Fund rather than out of NRC appropriations.

Existing § 60.64, pertaining to participation of Indian tribes, has been incorporated in the substantive provisions applicable to States. The change has been made for editorial reasons and is not intended to

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

an environmental impact appraisal and negative declaration is required for this proposed regulation.

PAPERWORK REDUCTION ACT STATEMENT

Sections 60.62 and 60.63 of this proposed rule amend information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule will be submitted to the Office of Management and Budget for review and approval of the information collection requirements.

REGULATORY FLEXIBILITY ACT CERTIFICATION

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule relates to the licensing of only one entity, the U.S. Department of Energy, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act.

LIST OF SUBJECTS IN 10 CFR PART 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

ISSUANCE

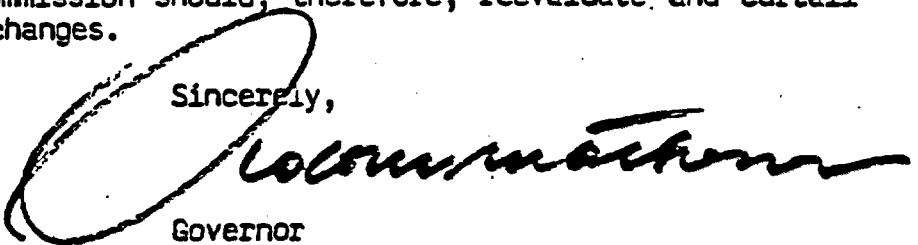
For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the Nuclear Regulatory Commission proposes to adopt the following amendments to 10 CFR Part 60.

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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,


Governor

SMM:ML:jh

cc: Donald Hodel, Secretary of Energy



RULEMAKING ISSUE

(Notation Vote)

June 26, 1984

SECY-84-263

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: 10 CFR PART 60--DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE IN GEOLOGIC REPOSITORIES: AMENDMENTS TO LICENSING PROCEDURES

Category: This paper involves several policy questions.

Purpose: To request Commission approval to publish proposed amendments to 10 CFR Part 60 related to site characterization and the participation of States and Indian tribes in the process of siting, licensing, and development of high-level radioactive waste disposal facilities.

Discussion: Final licensing procedures which set forth a regulatory framework for licensing geologic repositories for the disposal of high-level radioactive waste (HLW) were published on February 25, 1981 (46 FR 13971). These licensing procedures include provisions dealing with site characterization and the participation of States and Indian tribes in the process of siting, licensing, and development of a geologic repository.

In the statement of considerations to the proposed rule 10 CFR Part 60--Licensing Procedures (44 FR 70408), the Commission indicated that the procedures were "designed to allow affected States to participate to the fullest extent possible within the limits of the Commission's authority and the States' own desires and capabilities" (44 FR 70412). The Commission stated, however, that "provisions for State participation would be reviewed in the light of any pertinent statutory changes that may be enacted" (44 FR 70408). The final rule added provisions to ensure Indian tribes the same opportunities for participation as given to States, but did not otherwise significantly change the procedures for participation in the proposed rule.

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The existing 10 CFR Part 60 procedural regulations were written in the absence of any comprehensive legislation or other framework specifying the respective roles of NRC, DOE or the States and Indian tribes in the site selection process. Consequently, 10 CFR Part 60 alone specified opportunities for public participation. It requires, among other things, that NRC issue a draft site characterization analysis for public comment, that NRC answer questions from States/Indian tribes pertaining to DOE's site characterization report (renamed a site characterization plan in the proposed amendments), and that NRC provide DOE documents to interested parties. It requires that a site characterization report submitted by DOE contain information on site selection which the Commission would use in making National Environmental Policy Act determinations. The regulation has detailed provisions describing how States and Indian tribes may submit proposals to NRC for participation in the licensing process.

Since then, pertinent statutory change has been brought about by the Nuclear Waste Policy Act of 1982--42 U.S.C. 10101 et seq. (Waste Policy Act). The Waste Policy Act now defines the roles and responsibilities of NRC and DOE in their interaction with one another and in their interaction with the States, tribes, and general public. The Waste Policy Act requires that DOE consult and cooperate with the States and tribes at many specified points throughout the repository siting and development process. It requires, for example, that DOE issue its site characterization plan for public comment and directs DOE to hold public meetings during a mandated siting process. It requires DOE to provide funding to States and tribes to support their participation in the repository siting process, including support for providing information to their residents regarding any activities of the Commission. The Waste Policy Act requires added procedural steps of DOE between the time when DOE identifies a potential site, and the time when it submits a site characterization plan to the NRC. The Waste Policy Act specifies the content of the site characterization plan, with some differences from what is required by 10 CFR Part 60. In particular, the site characterization plan would not include site selection information. The Waste Policy Act specifies that DOE will prepare an environmental assessment for each site nominated for characterization. The content of these environmental assessments is specified and includes the type of site selection information previously required by 10 CFR Part 60 in the site characterization report.

While the Waste Policy Act does not require the Commission to alter its principle of allowing States and affected Indian tribes the fullest opportunities possible for participation, certain revisions to the procedures in 10 CFR Part 60 are necessary to bring the procedures in the rule in accordance with the procedures contained in the Waste Policy Act, and to factor in the experience gained in carrying out the pre-licensing consultation process since the existing procedures were adopted.

Thus, it is necessary to amend 10 CFR Part 60 to (1) provide a framework for State, tribal and public participation consistent with the Waste Policy Act, (2) avoid duplication of effort, and (3) conform the licensing procedures to the site selection process specified by the Waste Policy Act. In addition, some changes are desirable to reflect better NRC's pre-licensing evaluation process as it has evolved since the licensing procedures were promulgated. The staff's recommended changes are found in Enclosure A.

The net result of the combined provisions of the Waste Policy Act and the proposed amendments to 10 CFR Part 60 will be to provide the States, affected Indian tribes and the general public with equal or greater opportunity for participation in the repository development and licensing process than existed under 10 CFR Part 60 alone. Since the proposed amendments to 10 CFR Part 60 would alter the procedures under which States, Indian tribes and the public could participate in the NRC review process, the staff has made efforts to obtain the views of States and public interest groups on the proposed revision. Summaries of staff efforts to obtain the views of States and public interest groups on the proposed revisions are provided as Enclosures B and C. It is expected that some State representatives may argue that, since the Waste Policy Act does not expressly require NRC to change its licensing procedures, Congress did not intend for NRC to modify those provisions in Part 60 that speak to NRC relations with States and affected Indian Tribes.

It is also expected that some of the changes will be the focus of special comment.

These are:

- A significant change to the Site Characterization Plan (SCP) review process, which may be a controversial issue, is the deletion of NRC review of DOE's site selection process. Information concerning the site selection process will no longer be required in the SCP because the Waste Policy Act now requires this

information to be in an environmental assessment (EA) instead of in the SCP. NRC is not required by law or regulation to review the EA. Thus, there is some concern regarding NRC's exerting less influence on the site selection process than would be exerted under the existing rule.

- There may also be controversy resulting from a possible misperception that there has been a significant narrowing of state opportunities to participate in the NRC pre-licensing process, particularly regarding opportunities for funding by NRC of state activities. This would not result from the proposed amendments.
- Another potential issue is the nature of NRC review of DOE's environmental assessments. An analysis of the Commission's NEPA responsibilities as modified by the Waste Policy Act will be prepared in connection with the development of amendments to 10 CFR Part 51. The proposed rule contemplates that NRC will be reviewing environmental assessments in the light of the NRC/DOE procedural agreement. The review would not be of the process by which DOE screened sites and compared alternatives; some State representatives have suggested that this will not suffice to meet the Commission's NEPA responsibilities.

Commission resource needs to implement the provisions of 10 CFR Part 60 have been reflected in programmatic budget requests. Thus, no significant new resource expenditures will be required by issuance of the amendments.

Recommendations: That the Commission:

1. Approve for publication proposed amendments to 10 CFR Part 60 dealing with site characterization and the participation of States and Indian tribes, and the accompanying Statement of Considerations, as set forth in the draft Federal Register notice in Enclosure A.
2. Certify that the revised rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This certification is necessary in order to satisfy the requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(a).
3. Note:
 - a) Under the exemption set out in 10 CFR 51.5(d)(3), no environmental assessment is being prepared in connection with this action.

- b) Sections 60.62 and 60.63 of this proposed rule amend information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44. U.S.C. 3501 et seq.). This rule will be submitted to the Office of Management and Budget for review and approval of the information collection requirements.
- c) The Chief Counsel for Advocacy of the Small Business Administration will be informed by the Division of Rules and Records of the Certification regarding economic impact on small entities.
- d) The Subcommittee on Energy and the Environment of the House Interior and Insular Affairs Committee, the Subcommittee on Nuclear Regulation of the Senate Committee on the Environment and Public Works, the Subcommittee on Energy, Nuclear Proliferation and Federal Services of the Senate Committee on Government Affairs, and the Subcommittee on Energy and Power of the House Interstate and Foreign Commerce Committee will be informed by a letter similar to Enclosure D.
- e) The Office of Public Affairs has determined that it is not necessary to issue a public announcement for the proposed amendments. However, a copy of this Commission paper package is being placed in the Public Document Room.
- f) A regulatory analysis is contained in Enclosure E.
- g) A copy of the NRC/DOE Procedural Agreement referenced in Enclosure A is attached as Enclosure F.
- h) If approved, this notice of proposed rulemaking would be published in the Federal Register allowing 60 days for receipt of public comment.
- i) The proposed amendments involve matters related to the DOE siting guidelines. Both are concerned with the site selection process mandated by the Waste Policy Act and the roles of DOE, NRC, and the States and affected Indian tribes.
- j) The Commission has recently approved proposed amendments to 10 CFR Part 60 technical criteria, related to disposal in the unsaturated zone (SECY-83-444). The Commission will also be

receiving shortly an Advance Notice of Proposed Rulemaking related to the definition of HLW. It is not necessary that the Commission defer consideration of 10 CFR Part 60 amendments until the latter package is received.

- k) A comparative text of the proposed amendments is included.



William J. Dircks
Executive Director for Operations

Enclosures: As stated

Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, July 13, 1984.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, July 6, 1984, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

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ENCLOSURE A

NUCLEAR REGULATORY COMMISSION

10 CFR PART 60

**DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE
IN GEOLOGIC REPOSITORIES:
AMENDMENTS TO LICENSING PROCEDURES**

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing revisions to procedures with respect to NRC reviews of license applications for disposal of high-level radioactive waste in geologic repositories. For the most part, the revisions reflect the provisions of the Nuclear Waste Policy Act of 1982, particularly as they relate to site characterization and the participation of States and Indian tribes in the process of siting, licensing, and development of disposal facilities.

DATES: Comment period expires (insert date 60 days from date of Federal Register publication). Comments received after (insert date 60 days after publication in the Federal Register) will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments filed on or before that date.

ADDRESSES: Submit written comments and suggestions to: Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. Copies of comments received

may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patricia A. Comella, Deputy Director, Division of Health, Siting and Waste Management, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)427-4616.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (Commission or NRC) in 1981 promulgated procedures for licensing Department of Energy (DOE) facilities for disposal of high-level radioactive wastes in geologic repositories (46 FR 13971, February 25, 1981). More recently, Congress has established a definite Federal policy for such disposal. Nuclear Waste Policy Act of 1982, Pub. L. 97-425, 42 U.S.C. 10101 (Waste Policy Act). Section 121 of the Waste Policy Act directs the Commission, not later than January 1, 1984, to promulgate technical requirements and criteria that it will apply in approving or disapproving license applications with respect to geologic repositories. The Commission has complied with this requirement by publishing final technical criteria (48 FR 28914, June 21, 1983). The Commission is now turning to a review of its previously adopted procedures. One objective is to reflect the provisions of the Waste Policy Act. In addition, however, the Commission is taking this opportunity to clarify its procedures in the light of experience gained over the past three years in consultations on the SCA reviews of DOE siting projects and in light of the extensive prelicensing interaction process now underway between NRC, the states, and DOE.

The principal aspects of the licensing procedures that the Commission has under review concern (1) the role of NRC during site screening and site characterization activities, (2) State, tribal, and public participation in NRC activities with respect to geologic repositories, (3) NRC responsibilities under the National Environmental Policy Act (NEPA), (4) procedures and standards for identifying categories of material as high-level radioactive wastes, and (5) changes, especially with respect to content of the license application, needed to conform the licensing

procedures to the technical criteria.¹ The present rulemaking proposal deals with the first two of these topics; because the two are so intertwined they will be treated together.

Background

In 1974, when the Atomic Energy Commission's functions were divided between the Energy Research and Development Administration (ERDA) and the Nuclear Regulatory Commission, Congress provided generally that ERDA high-level waste disposal facilities were to be subject to NRC's regulatory and licensing authority (42 U.S.C. 5842). NRC's role with respect to such facilities remained unchanged when the functions of ERDA were transferred in 1977 to the new Department of Energy (DOE) (42 U.S.C. 7151).

Although the Atomic Energy Act recognizes the interest of the States in the peaceful uses of atomic energy and the need for cooperation with the States with respect to the control of radiation hazards, the Federal government was authorized to regulate the disposal of high-level radioactive waste to protect public health and safety (42 U.S.C. 2021(c), 10 CFR 150.15). Nevertheless, the Act recognizes the need for cooperation with the States, 42 U.S.C. 2021(a), and it is

¹Issues pertaining to NEPA will require modifications to 10 CFR Part 51. Amendments to 10 CFR Part 51 to reflect the Waste Policy Act will be the subject of a subsequent rulemaking. However, actions which the Commission may take relative to environmental assessments required by the Waste Policy Act are discussed later in this statement. Consideration of the definition of HLW is reserved, and the Commission anticipates publication of an advance notice of proposed rulemaking on this topic in coming months. The content of application section will be reviewed after issuance of DOE siting guidelines under the Waste Policy Act to take such guidelines into account if and as appropriate. The Commission would welcome suggestions from interested persons with respect to other changes that may be needed to reflect provisions of the Waste Policy Act.

Commission practice to consult with State and Local governments on matters of common interest.²

Recognizing that further legislative guidance would help to define appropriate forms of consultation and cooperation, Congress in 1978 directed the Commission to prepare a report on means for improving the opportunities for State participation in the process for siting, licensing, and developing nuclear waste storage or disposal facilities. NRC Authorization Act for Fiscal Year 1979, Pub. L. 95-601, Sec. 14(b). After consultation with the States, the Commission submitted its report to Congress in 1979. Means for Improving State Participation in the Siting, Licensing and Development of Federal Nuclear Waste Facilities, NUREG-0539, reprinted in Nuclear Waste Isolation Pilot Plant (WIPP): Oversight Hearings Before the Subcommittee on Oversight and Investigations of the House Comm. on Interior and Insular Affairs, 96th Cong., 1st Sess. 514-601 (1979) (the NRC Report). The NRC Report, "based on the premise that State involvement in any national nuclear waste management program is a critical element in making the program work," included several procedural and substantive recommendations.

The value of such State involvement -- for the Commission as well as for the States -- was emphasized as the NRC developed a framework for licensing geologic repositories for high-level radioactive waste (10 CFR Part 60). The first step in this process was the Commission's publication of a Proposed General Statement of Policy (43 FR 53869, November 17, 1978). This document contemplated that the Commission would make licensing determinations before DOE commenced construction of a repository shaft. DOE would be encouraged, however, to consult informally in advance with NRC staff. At this early stage, NRC would point out aspects of a location selected by DOE which might require special attention or present special

²42 U.S.C. 2021 is a codification of a 1959 statute which added a new Section 274 to the Atomic Energy Act of 1954. Section 274 established procedures and criteria for discontinuance of Federal regulatory responsibilities with respect to byproduct, source, and special nuclear materials and the assumption thereof by the States. However, under Section 274, the regulation of high-level waste disposal for safety reasons remained a Federal responsibility. See Pacific Gas & Electric Co. v. Energy Commission, ___ U.S. ___, 75 L.Ed.2d 752, 774 (1983).

problems and NRC would help to define the kinds of information needed for licensing decisions. As noted, repository construction (including sinking of the main repository shaft) would require licensing action. Site characterization would continue during repository construction, with the data to be reviewed before issuance of a license authorizing receipt of radioactive material. Upon commencement of NRC's informal review, NRC would publish a notice in the Federal Register, send copies of information submitted by DOE to State and local officials, and offer to meet with those officials to provide information and explore possibilities of their participation in the licensing process.

After soliciting and considering views, the Commission next proceeded to issue a proposed rule. One significant difference from the policy statement was that DOE would be permitted to sink shafts and engage in site characterization activities at depth before formal licensing proceedings were commenced. DOE's site characterization plans would nevertheless be reviewed in considerable detail in advance, with opportunity for public comment on an NRC draft site characterization analysis. The proposed rule incorporated detailed provisions to ensure extensive opportunities for State and public participation. These procedures were "designed to allow affected States to participate to the fullest extent possible within the limits of the Commission's authority and the State's own desires and capabilities." The Commission observed, however, that "provisions for State participation would be reviewed in the light of any pertinent statutory changes that may be enacted." Moreover, it noted that the extent of State participation may be affected by legislative action on the matters discussed in the NRC Report (44 FR 70408, December 6, 1979).

The final rule added provisions with respect to notice to and participation by Indian tribes. However, inasmuch as public comments on the proposed rule pointed out no serious deficiencies in the opportunities for State and public participation, the provisions that had been proposed were adopted without material change (46 FR 13971, February 25, 1981).

Both the proposed rule and final rule contemplated that DOE would characterize several sites at depth, primarily so as to enable the

Commission to discharge its NEPA responsibilities with respect to evaluation of alternatives. With this in mind, DOE would have been required, as discussed below, to include information concerning its site selection process in its site characterization report to NRC.

The Existing Regulations

The principal aspects of the existing licensing procedures that are of present interest relate to (1) submission of DOE's site characterization report, (2) public notice of receipt of the site characterization report, (3) the preparation of a site characterization analysis by NRC, (4) consultation between NRC and States and Indian tribes, (5) participation in NRC reviews, and (6) procedures for the formal hearing process. It will be useful to review the present language of 10 CFR Part 60 with respect to these items before turning to the changes that we propose to adopt.

1. Site characterization report (§ 60.11).

NRC requires that DOE submit a site characterization report "as early as possible after commencement of planning for a particular geologic repository operations area, and prior to site characterization." Both the timing and required content of this report reflect the statutory directive in Section 14(a) of the NRC Authorization Act for 1980, Pub. L. 95-601, which provides:

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Sec. 14(a) Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high-level radioactive wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal.

The Commission, in proposing its licensing procedures, made specific reference to this statute and explained that its rule would "ensure that the notice from the Department will, in fact, initiate a meaningful, substantive review" (44 FR 70409). The site characterization report,

together with the NRC staff assessment thereof and meetings between NRC staff and State officials and other interested persons, "assures an early opportunity for other Federal and State agencies and the public to become involved in the decision making process" with respect to DOE's site characterization and site selection programs. Ibid. The review process would provide NRC an opportunity to identify and consider a broad range of public concerns; this would assist NRC in the preparation of a comprehensive and reasoned analysis.

The site characterization report would include more than a description of the site and the program to be undertaken to characterize the ability of the site to achieve waste isolation. It would also discuss "the method by which the site was selected for site characterization... and... a description of the decision process by which the site was selected for characterization, including the means used to obtain public, Indian tribal and State views during selection." Alternative media and sites at which DOE intends to carry out site characterization would be identified. DOE's report on these topics would enable the Commission to consider whether additional information might be needed by the Commission in discharging its NEPA responsibilities (46 FR 13972).

2. Notice and publication (§ 60.11).

As directed by Section 14(a) of the 1980 NRC Authorization Act, NRC rules provide for notice to the Governor and the State legislature of the State of proposed situs whenever a site characterization report is received. Although not required to do so by law, NRC would also (1) transmit copies of the site characterization report to these addressees, (2) provide similar notice to local officials, tribal organizations, and Governors of contiguous States, and (3) publish in the Federal Register notice of receipt of the site characterization report which, among other things, will advise that governmental and Tribal officials may request consultation with NRC staff.

3. Site characterization analysis (§ 60.11).

The rules provide that NRC will review the site characterization report and prepare a draft site characterization analysis which discusses the information submitted by DOE, and that a request for public

comment on the draft site characterization analysis is to be published in the Federal Register; copies are to be transmitted to the State and local officials and Tribal organizations who had previously received notice under the rule. It was anticipated that NRC would hold local public meetings in the immediate area of the site to be characterized, both to disseminate information and to obtain public input, but this is not an explicit requirement under the rule. After a comment period of at least 90 days, NRC would transmit a final site characterization analysis to DOE. As noted above, these procedures were designed to solicit comments that would assist NRC to prepare a comprehensive and reasoned analysis.

4. Consultation (§ 60.61, § 60.64(a)).

Under Part 60, NRC staff would consult with State government and Tribal officials, on written request, to keep them informed of NRC views on the progress of site characterization and to notify them of NRC meetings and consultations with DOE. NRC would respond to written questions or comments from these officials and transmit such responses to DOE. Consultation would not be limited to site characterization, but could include a review of NRC licensing procedures and the type and scope of State and Tribal activities in the license review permitted by law as well.

5. Proposals for State participation (§§ 60.62-60.64).

The NRC Report (at 18-24, 27-28) distinguished between improvement of State participation in the NRC review process on the one hand and, on the other, the carrying out of an "independent State review" of a proposal to store or dispose of nuclear waste. The Report identified several avenues for State participation in NRC reviews that could be implemented under existing law. These included support from NRC in the form of educational or information services, exchange of personnel under the Intergovernmental Personnel Act, and contracts for technical services needed by the Commission. Besides the activities that could be carried out under existing law, the Report (at 28) recommended that the Congress "establish a grant program to allow the States to participate more fully in the Federal waste management program."

Part 60 provides for State participation in the review of a site characterization report and/or license application. A proposal initiated by the State would describe how the State wishes to participate in the review and how it plans to facilitate local government and citizen participation, and it would include funding estimates of work to be done under contract with the NRC. Subject to the availability of funds and legal constraints, NRC would approve State proposals that it finds will enhance communications with the State and contribute productively to NRC's license review.

Under the State participation provisions, proposals can be submitted by any State "potentially affected" by the siting of a repository, even if the prospective repository site is in a different State. By the same token, Indian tribes "potentially affected" by the siting of a repository may submit proposals for participation in the same manner as the States.

6. Formal licensing procedures.

The NRC rules provide that notice of specified events (docketing, hearing, proposed issuance of license, issuance of license) will be published in the Federal Register; there are additional specific requirements for notice to State and local officials (and to Tribal organizations if a repository is to be located within an Indian reservation). 10 CFR §§ 2.101-2.106. Affected States and Indian tribes desiring to participate as a party to a licensing proceeding may petition for leave to intervene; and they may also participate in a more limited capacity as provided by the regulation. 10 CFR §§ 2.714, 2.715.

The Needed Revisions

One of the purposes of the Waste Policy Act is to define the relationship between the Federal government and the State governments, and between the respective Federal agencies, with respect to the disposal of high-level radioactive waste. The Act prescribes in great detail procedures for DOE to consult and cooperate with the States (and affected Indian tribes) with respect to determining the suitability of an area for a repository and with respect to other issues arising in connection with the planning, siting, development, construction, operation, or closure of such a facility (Sec. 117, 42 U.S.C. 10137). DOE is directed

to make initial grants to States with potentially acceptable sites for a repository and, subsequently, to provide further grants to any State in which there is a site approved for characterization (Sec. 116(c), 42 U.S.C. 10136). The latter grants are to enable the States, among other things, to review potential impacts of the repository upon the State and its residents and to provide information to such residents regarding the activities of DOE or the Commission with respect to the site. DOE is also directed to provide financial and technical assistance to a State in which a repository is to be located, after NRC has issued a construction authorization, in order to mitigate the impacts of development of the repository. Ibid. The Waste Policy Act also contains requirements that DOE hold public hearings at several stages of site selection and characterization [Sec. 112(b)(2), 42 U.S.C. 10132 (nomination); Sec. 113(b)(2), 42 U.S.C. 10133 (characterization); Sec. 114(a)(1), 42 U.S.C. 10134 (recommendation for development)]. The designation of a site as suitable for application for a construction authorization will not be effective over State objections except pursuant to a Congressional resolution which thereafter becomes law (Sec. 115, 42 U.S.C. 10135).

The Waste Policy Act reconfirms the authority and responsibility of the Commission to review a specific repository proposal, pursuant to the Atomic Energy Act, in order to protect the public health and safety. The Waste Policy Act provides for Commission review prior to site characterization, as well as in a formal licensing proceeding, and for a Commission determination as to whether a repository of a particular design at a specified site will provide adequate isolation of radioactive waste. The Waste Policy Act makes no specific provision for the Commission to engage in, or independently review, the processes of site screening and selection. The Commission's only prescribed participation in this selection process comes in NRC's review and concurrence in guidelines for the recommendation of sites for repositories (Sec. 112(a), 42 U.S.C. 10132). However, the Commission will review DOE's draft environmental

assessments as it would review any other information on site investigation and site characterization, in order to allow early identification of potential licensing issues for timely resolution. Reviews will be carried out in accord with the procedural agreement between NRC and DOE for interface during site investigation and site characterization.³

While the Waste Policy Act establishes new procedures for the high-level waste management program, the Commission remains entirely free to consult with the States and Indian tribes, at its own initiative or theirs, with respect to any matter pertaining to NRC's regulatory role. Although specific channels are established for States and Indian tribes to engage in consultation and cooperation with DOE, these cannot substitute for direct interaction with NRC with respect to this agency's functions. Nevertheless, an examination of the details of the Waste Policy Act highlights differences from Part 60 which need to be taken into account. In addition, there are some changes -- particularly with respect to funding of State participation -- that would have been desirable even in the absence of the new legislation. The need for revisions can be analyzed using the same headings as before.

1. Site characterization report.

As is the case under the existing regulations, it is appropriate that the submission of information about a site and plans for characterization of the site should be the occasion for commencing NRC's initial substantive review. However, the Waste Policy Act specifies a number of actions DOE must take before such information is required to be submitted to NRC. Further, the Waste Policy Act calls for NRC to review information of narrower scope than that which, under 10 CFR Part 60, was to be included in the DOE site characterization report.

³Procedural 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.

48 FR 38701, August 25, 1983. The Procedural Agreement is designed to assure that an information flow is maintained to facilitate each agency's accomplishment of its responsibilities relative to site investigation and characterization. The Procedural Agreement also provides that DOE is to notify potential host States and affected Indian tribes of technical meetings between DOE and NRC technical staff and that DOE is to invite those States and tribes to attend. These technical meetings will be open meetings, with members of the public being permitted to attend as observers.

Under § 60.11, the site characterization report was to be furnished to NRC "as early as possible after commencement of planning" for a particular repository. In contrast, the Waste Policy Act requires that DOE first nominate several sites (after holding public hearings and consulting with the governors of affected States) and that particular locations would then be recommended as candidate sites which, if approved by the President, would be eligible for site characterization.

The new law marks this time -- before DOE proceeds to sink shafts -- as the point when the site characterization plan is submitted. When the Commission reviews this plan, the site to be characterized will already have been the subject of extensive scrutiny. It will have been described in an environmental assessment in which the siting guidelines are applied and will have been discussed at public meetings at which public comments will have been solicited and received. It also will have been reviewed by both DOE and the President in the course of the nomination approval process. Extensive data gathering programs may have been carried out in conjunction with these activities.

DOE may very well need to make choices and commitments in the course of such data gathering that could have a significant bearing upon the safety and licensability of a repository. The drilling of boreholes for testing purposes, for example, could affect the integrity of a repository that might be constructed at the site. Close coordination between DOE and NRC is therefore needed prior to submission of the site characterization report so as to facilitate the early identification of issues of potential safety significance and so as to afford an opportunity for NRC to provide DOE with timely views.

Under the Waste Policy Act, the information which is to be submitted to the Commission for review and comment prior to site characterization is similar to existing § 60.11. Both Part 60 and the statute call for DOE to describe the site, the proposed site characterization activities, a conceptual repository design, and certain information with respect to waste form or packaging. However, several categories of information which were previously listed in § 60.11 are omitted under the Waste Policy Act from the required submission to NRC -- notably, the method by which the site was selected for site characterization, the identification and location of alternative media and sites at which DOE intends to

conduct site characterization, and a description of the decision process by which the site was selected for characterization (including the means used to obtain public, Indian tribal and State views during selection).

The Waste Policy Act still requires a discussion of the omitted items, but in a separate document called an environmental assessment (Sec. 112(b)(1), 42 U.S.C. 10132). The preparation of an environmental assessment is to be preceded by public hearings held by DOE and consultation by DOE with governors of affected States. Ibid. Although not required to do so by the Waste Policy Act, DOE intends to make environmental assessments in draft form available for public comment. All this occurs in connection with the nomination of a site prior to Presidential review and approval of a candidate site for site characterization.

The Waste Policy Act makes no provision for the Commission to comment to DOE on its environmental assessments or otherwise to participate in the nomination process. It is nevertheless the intention of the Commission to review and comment on the environmental assessments, as well as other technical documents being prepared by DOE, in order to assess on a continuing basis the information collected to date and the program for the development of additional information for a potential license application. However, the NRC staff would not comment upon the methodology used by DOE to compare sites or upon the relative merits of one site against another. Such a review by NRC is not necessary to fulfill any of its statutory responsibilities. Moreover DOE will be selecting sites using guidelines in which the NRC will have already concurred. We regard it as appropriate, however, and fully consistent with the objectives of the Waste Policy Act, for the NRC staff to provide to DOE current expressions of its views on the quality of the data available and the potential licensing issues that may be anticipated and that may need to be addressed in DOE's site investigation and site characterization activities.

In view of the foregoing considerations, § 60.11 needs to be revised to change both the timing and content of the DOE site characterization report to conform to the Waste Policy Act. Despite these changes, however, the Commission plans to be involved at earlier stages in reviewing data collected by DOE as well as its programs for gathering additional data. The instrument for accomplishing this -- namely, the Procedural Agreement referred to above -- is already in place and is being implemented routinely.

2. Notice and publication.

The Waste Policy Act provides that: "Before nominating a site, the Secretary [of Energy] shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, of such nomination and the basis for such nomination" (Sec. 112(b)(1)(H), 42 U.S.C. 10132). Later, after public hearings and a prescribed review process involving Presidential approval, DOE must submit site characterization plans to those same officials, for review and comment; concurrently, DOE is required to submit such plans to NRC (Sec. 113(b)(1), 42 U.S.C. 10133). Although publication of notice in the Federal Register is not required expressly, DOE must make both the environmental assessment and the site characterization plan "available to the public" [Sects. 112(b)(1)(G), 113(b)(2)(A), 42 U.S.C. 10132-33]. The Commission anticipates that DOE will give notice in the Federal Register as the means for assuring adequate public availability of these documents.

Since DOE is required to make its site characterization plan available to State and tribal officials and to the public, duplicative provisions may be removed from Part 60. Even so, however, it makes sense for the Commission to publicly acknowledge receipt of DOE's submission so as to provide notice of the opportunity for consultation thereon with the NRC staff.

3. Site characterization analysis.

The Waste Policy Act requires, before DOE proceeds to sink shafts at a candidate site, that DOE submit its site characterization plans to NRC (as well as State and tribal officials) for review and comment (Sec. 113(b), 42 U.S.C. 10133). The Commission believes that Congress intended that DOE should provide the plans sufficiently far in advance so that comments may be developed and submitted back to DOE early enough to be considered when shaft sinking occurs, and at all times thereafter. As explained above, this implies an ongoing working relationship with DOE to assure that its data and assessments are made available to NRC as they are developed. As already mentioned, NRC and DOE have, in fact, developed a Procedural Agreement under which NRC is to have access to

information as it is generated and, equally important, NRC is to comment regularly to DOE with respect to this information.

Thus, the Commission expects that the principal means of evaluation will be the interagency process that begins early in DOE's consideration of a site. When investigations have progressed far enough to warrant sinking of shafts, it is our expectation that NRC will already be adequately informed with respect to data generated to date and that NRC's concerns would already have been focused and brought to the attention of DOE. Assuming this to be the case, NRC should be in a position to complete its review and provide comments to DOE, as required by the Waste Policy Act, in a prompt fashion. The site characterization analysis would be a continuing dynamic process, better suited for ongoing public input and NRC review, rather than "freezing" the comment and review process at one arbitrary point in time.

An ongoing public review process would also facilitate DOE's ability to obtain comments on its site characterization plan from the States and Indian tribes as well. The Waste Policy Act affords an opportunity for these entities to enter into written agreements with DOE specifying procedures for consultation and cooperation that could include early review. Moreover, the NRC/DOE Procedural Agreement assures that States and Indian tribes will have an opportunity to be informed routinely concerning the information made available to NRC and NRC's comments thereon and to attend NRC/DOE technical meetings.

Under existing 10 CFR Part 60, DOE's submission of site characterization plans was to occur, as already noted, "as early as possible after commencement of planning" for a particular repository. There was no assurance that either NRC or other interested parties would have had prior information about the site or any opportunity to make concerns known to DOE. It was in this context that the Commission determined that NRC would prepare a draft site characterization analysis for public review and comment before developing a statement of the agency's views for consideration by DOE.

Under the Waste Policy Act, however, DOE's submission comes after an extensive period of interaction between DOE and the States, affected Indian tribes, and the public, and after Presidential review and approval

of the sites recommended for characterization. By the time a site characterization plan is to be submitted for review and comment, there should have been ample opportunity for NRC to have become acquainted with both DOE's programs and the public's concerns. Since technical meetings under the Procedural Agreement will be open, interested parties will have an opportunity to follow the course of NRC activities and to bring their concerns to the attention of NRC. Further opportunities for public involvement are provided by law, since DOE must also seek the comments of the States and tribes, and hold public hearings in the vicinity of the site. For these reasons, together with the scheduling mandates of the Waste Policy Act, the Commission believes it is no longer necessary to prepare a draft site characterization analysis on which public comment is sought. The Commission particularly asks for views on this proposed change.

It should be emphasized, however, that NRC will have been engaged in an ongoing review of DOE's activities even before submission of a site characterization plan and that the comments of interested parties may be submitted at any time for consideration as a part of that review process.

4. Consultation.

Under the Waste Policy Act, the Commission is directed to provide "timely and complete information regarding determinations or plans made with respect to site characterization, siting, development, design, licensing, construction, operation, regulation, or decommissioning" of a repository, Sec. 117, 42 U.S.C. 10137, but this affords no rights to States and Indian tribes beyond those already provided in law. H.R. Rep. 97-785, Part I at 74. The proposed amendments contain conforming language implementing this requirement. The Waste Policy Act charges DOE with the responsibility to "consult and cooperate" with the States and Indian tribes in an effort to resolve their concerns about the safety, environmental, and economic impacts of a repository. States may make comments and recommendations to DOE regarding any activities taken under this subtitle," and this may be funded by grants from DOE (Sec. 116(c) (1)(B)(v), 42 U.S.C. 10136). DOE is directed to take State and Indian concerns into account "to the maximum extent feasible" (Sec. 117(b)),

42 U.S.C. 10137). Accordingly, in expectation that States and tribes will communicate directly with DOE with respect to its site characterization plans, the provision that the Director will respond to questions and comments of the States and tribes on DOE's plans has been deleted.

However, the Commission has consistently expressed its intention to maintain a dialogue with the States, Indian tribes, and members of the public. This intention is unchanged. The scope of such dialogue may appropriately extend to any issue which must be considered and resolved by NRC in the discharge of its licensing responsibilities.

5. Proposals for State participation.

Subpart C of 10 CFR Part 60 provides for the filing of proposals by States and Indian tribes for participation in reviews of site characterization reports and license applications. In response to such proposals, NRC would consider providing certain educational or information services and funding work that the State proposes to perform for the Commission, under contract, in support of the review.

With enactment of the Waste Policy Act, authority to fund a broad variety of State activities, including grants to enable a State "to review activities...for purposes of determining any potential economic, social, public health and safety, and environmental impacts" of a repository has been vested in DOE. Sec. 116(c)(1)(B)(i), 42 U.S.C. 10136; see also Sec. 118(b)(2)(A)(1) (pertaining to affected Indian tribes). The scope of NRC assistance available may be limited by this statutory direction. However, other elements of Commission support would not be affected as explained in greater detail in the section-by-section analysis below.

6. Formal licensing procedures.

The Waste Policy Act incorporates the basic licensing structure which had been described in the Commission's regulations. It expressly provides for consideration of a DOE application, subject to certain deadlines, "in accordance with the laws applicable to such applications"

(Sec. 114(d), 42 U.S.C. 10134). Affected States and Indian tribes will be entitled to participate in the licensing proceedings.

The new requirement that DOE and NRC provide timely and complete information to the States and tribes, Sec. 117(a), 42 U.S.C. 10137, would apply to significant milestones in the formal adjudicatory process. The rule presently reflects this, and the Commission finds no need to modify the formal regulatory structure for licensing activities at geologic repositories.

Section-By-Section Analysis

In light of the foregoing considerations, the Commission is proposing to revise its licensing procedures with respect to disposal of high-level waste in geologic repositories. The following section-by-section analysis provides additional explanatory information. All references are to Title 10, Chapter I, of the Code of Federal Regulations. Other revisions, including changes that may be needed to conform with the Waste Policy Act's provisions for environmental reviews, will be the subject of separate rulemaking.

10 CFR Part 60, Subpart A

§ 60.2 Definitions.

The terms "Indian Tribe" and "Tribal organization" would no longer appear in Part 60 and the definitions of the terms have therefore been deleted. The term "affected Indian tribe," as defined in the Waste Policy Act, is the proper designation for those entities that are entitled to notice and other recognition under the rule. The proposed rule incorporates the statutory definition of "affected Indian tribe."

10 CFR Part 60, Subpart B

The sections in this subpart have been renumbered so as to allow for insertion of additional general provisions, if needed, at a future date.

§ 60.15 [formerly § 60.10] Site characterization.

No change.

§ 60.16-18 [formerly § 60.11].

The former section § 60.11, captioned "Site characterization report," has been revised to conform to the Waste Policy Act. It has been divided into three sections in order to provide a clearer editorial structure.

The "site characterization report" has been changed to a "site characterization plan." Note that this includes more than DOE's "general plan for site characterization activities;" conforming to Sec. 113(b), 42 U.S.C. 10133, it must also incorporate information on waste form and packaging as well as a conceptual repository design. The change from "report" to "plan" better conveys the sense that DOE is describing a program to obtain information which can be used later to evaluate a site, as opposed to a presentation of data which would allow a preliminary judgment as to site acceptability. The NRC review process at this stage is not directed to advising DOE whether or not the site is or is not satisfactory, but rather whether or not the characterization program (1) will generate data needed for arriving at subsequent licensing determinations and (2) will adversely and significantly affect the ability of the geologic repository to achieve the prescribed performance objectives.

§ 60.16 Site characterization plan required.

The requirement for DOE to submit a site characterization report appeared in § 60.11(a). As before, the document (now a "plan") is to be submitted to the Director of NRC's Office of Nuclear Material Safety and Safeguards. The purpose of the submission ("for review and comment") is derived from the Waste Policy Act. Similarly, the timing of the submission ("before proceeding to sink shafts") reflects the new statutory direction.

The regulation refers to characterization at any area which has been approved by the President for site characterization. Such an area would be a "candidate site" as defined in the Waste Policy Act. The regulation avoids that term, however, because it already defines "site" in a different way.

§ 60.17 Contents of site characterization plan.

This section restates, with minor changes, the information which the Waste Policy Act requires to be submitted to the Commission for review and comment.

Because Part 60 defines high-level radioactive waste to include spent nuclear fuel, the latter category of material is not referred to in § 60.17.

Consistent with other provisions of Part 60, the term "geologic repository operations area" (rather than "geologic repository" or "repository") is employed when the context pertains to the area in which waste handling activities are conducted.

Part 60 defines "host rock" as "the geologic medium in which the waste is emplaced." Accordingly, the rule refers to the waste-host rock relationship instead of the relationship of the waste form or packaging and the geologic medium. The statute's reference to the "packaging" for the waste corresponds to Part 60's "waste package," and the proposed rule retains the latter term for purposes of consistency.

The Waste Policy Act requires DOE to include in its general plan for site characterization activities "any other information required by the Commission." The Commission has so far identified only one such item--namely information with respect to quality assurance. Other information may hereafter be found to be needed to enable the Commission to determine whether the proposed site characterization activities are appropriate; if so, the Commission would establish its requirement either by rule (particularly if the information would be valuable on a generic basis) or by order in a particular case. Although the Commission's obligations to observe the statutory schedule must be heeded, there is no reason in principle why the submission of other information could not be ordered even after the site characterization plan had been filed, if required for the Commission to discharge its review and comment responsibilities effectively.

The Waste Policy Act's reference to plans to control any adverse, "safety-related" impacts from site characterization activities can be traced to former § 60.11(a)(6)(iii). The Commission's concern originally was that DOE address those aspects of site characterization that (1)

could be significant with respect to radiological safety prior to permanent closure or (2) could affect the ability of the repository to satisfy the performance objectives pertaining to waste isolation. The proposed rule contains language that reflects this construction of the statute.

The Commission recognizes that the requested level of detail is not spelled out precisely. Such items as "a description of the area" and "a conceptual design for the geologic repository operations area that takes into account likely site-specific requirements" must not be read in isolation. They must be understood to require sufficient detail for the Commission and other statutory reviewers to be able to comment in an informed manner. So construed, the Commission believes that they are sufficiently clear; should additional information be needed, the Commission would retain the option, by order, to require further submissions.

As noted, the Commission has included an explicit statement that the site characterization plans should spell out DOE's quality assurance programs. Existing § 60.11 includes such language, but it was not included in the counterpart provision of the Waste Policy Act. However, since a principal aim of site characterization is to develop data that have been obtained and documented in a fashion which will support licensing findings, the NRC review should be concerned with the approach which DOE is taking to data collection, recording, and retention as well as to the content of the information which DOE seeks to assemble. Because of the importance it attaches to this item, the Commission considers an explicit requirement for submission of information on quality assurance programs to be necessary.

We have also incorporated the statutory requirement that DOE is to include in its general plan a statement of the criteria to be used to determine suitability of the site for the location of a repository. Because site characterization will be a prerequisite for application of some guidelines, see Sec. 112(b)(1)(E)(ii), 42 U.S.C. 10132, we anticipate that the site characterization plan will also include a description of how DOE will use the information gathered during site characterization to determine if the site suitability guidelines are met.

The Waste Policy Act applies only with respect to geologic repositories that are used, at least in part, for the disposal of wastes from civilian nuclear activities. Sec. 8, 42 U.S.C. 10108. If DOE were to develop a facility exclusively for wastes from atomic energy defense activities, it would nevertheless be subject to licensing by NRC under the Energy Reorganization Act. The Commission has considered whether the changes proposed herein, which are largely responsive to the Waste Policy Act, would be appropriate with respect to such defense facilities. It appears that the Commission, acting under amended Part 60, could still effectively discharge its health and safety responsibilities for such defense waste facilities. But, in this section, the provisions that prescribe the contents of the site characterization plan need to recognize that defense-only facilities would not have any applicable siting criteria "developed pursuant to Section 112(a) of the Nuclear Waste Policy Act"; instead, in that case, the rule requires that the site characterization plan set out the siting criteria actually used by DOE.

On environmental matters, the situation is more complex. The Waste Policy Act limitations with respect to the scope of the Commission's environmental responsibilities under NEPA -- which we would implement in the modified procedures at the site characterization stage -- would not apply to a repository used solely for defense wastes. Accordingly, the Commission would expect to require that DOE submit, with its site characterization plan for a defense facility, those items of information with respect to site screening and selection that appear in existing § 60.11(a) but which are not included in this proposed rule. Because the information relates to implementation of NEPA, it would be incorporated in revised 10 CFR Part 51 rather than Part 60.

§ 60.18 Review of site characterization activities.

As under existing § 60.11(b), the Commission will publish notice of receipt of DOE's site characterization plan. Although this may duplicate information published by DOE, it will serve to identify, to anyone interested, appropriate points of contact within the NRC staff. Since alternative areas are not required to be identified in the site characterization plan, the proposed rule omits any reference to such areas.

Language pertaining to consultation has been revised to conform with proposed Subpart C.

Similarly, notwithstanding duplication of notice by DOE, the Commission will give direct notice to State and tribal officials concerning receipt of DOE's site characterization plan. Under the proposed rule, this information would be furnished to the officials entitled to timely and complete information under the Waste Policy Act. Because such officials would already have received copies of the site characterization plans from DOE, the notice from the Commission would not be accompanied by additional copies thereof. However, a copy of the site characterization plan would be placed in the Public Document Room. (Existing § 60.11 would require local officials, and also the governors of contiguous States, to be afforded notice from NRC. This requirement has been deleted in the light of the new statutory provisions.)

For the reasons set out in the discussion above, the proposed rule omits the mandatory draft site characterization analysis described in existing § 60.11. However, the proposed rule does provide that the Director may invite and consider comments on DOE's site characterization plan and that he may also review and consider the comments made in connection with the public hearings which DOE is required to hold. Moreover, the Director will publish a notice of availability of a site characterization analysis and will invite host States, affected Indian tribes and all other interested persons to review and comment thereon. Comments received in response to such invitation will be reviewed by the Director; and where the Director determines that there are substantial new grounds for making recommendations or stating objections to DOE's site characterization program, these concerns will be expressed to DOE.

The Director's review of the site characterization plan is substantially equivalent to the final site characterization analysis prescribed by existing § 60.11. The reference to the Director's "comments" reflects the Waste Policy Act provision that the information is submitted to the Commission for "review and comment." The proposed rule refers to a "statement" of objections by the Director, instead of a Director's "opinion"; the latter term was unnecessarily equivocal. It is intended that the objections would be directed at the nature of the site charac-

terization activities being proposed and not to the suitability of the site as such; of course, if it appeared that a particular site exhibited such a profound deficiency that it could not be compensated for adequately in the light of data from any site characterization program, the Director could object to the program in its entirety, but the Commission regards this as highly improbable given the procedures prior to submission of a site characterization plan to NRC specified in the Waste Policy Act.

The inclusion of a finding with respect to the necessity of using radioactive material implements the specific direction in Section 113(c) (2)(A), 42 U.S.C. 10133; the Commission has previously concluded that the use of source, special nuclear, and byproduct material for purposes of site characterization does not require a license, 10 CFR § 60.7(a), and there is no reason to believe that the Waste Policy Act was intended to change this view.

Since DOE is not required to prepare an environmental impact statement with respect to site characterization, see Sec. 113(d), 42 U.S.C. 10133, the references in existing § 60.11 to such statement have been omitted. A footnote to the text of the rule points out, however, that DOE's environmental assessments will be reviewed -- as other DOE documents will be -- for the purpose of early identification of potential licensing issues for timely resolution.

The Waste Policy Act requires that DOE report to the Commission (and to State and tribal authorities) at least semiannually on the nature and extent of site characterization activities and the information developed from such activities. The same concerns were addressed in existing § 60.11(g). The Commission believes the two formulations are essentially the same, but that the more detailed version in the NRC regulation provides a clearer statement of the information that is needed. Accordingly, the proposed rule conforms closely to the Commission's earlier rule. The most significant change, reflecting the adoption of a statutory directive to DOE, is that the provisions are now expressed in mandatory ("shall") terms. Also, the existing rule includes a provision for submission of additional reports on any topic, if requested by the Director; as modified, such other topics must still be covered as requested by the Director, but the information may be included in the

semiannual reports instead of "additional" ones. The Director will review the semiannual reports and, where appropriate on the basis of new information contained therein, the Director will make recommendations or state objections with respect to DOE's site characterization program.

The proposed rule provides for the Director to transmit to State and tribal officials copies of all comments made to DOE under § 60.18. This includes not only the site characterization analysis and comments on the site characterization plan, but also any other comments which the Director chooses to make by way of "expressing current views." Other correspondence between NRC and DOE will be placed in the Public Document Room, but will not routinely be distributed to the designated officials. The omission of the requirement that the Director consider comments received from States in accordance with § 60.61 conforms to the changes in Subpart C. Such comments may, however, be solicited and reviewed as appropriate in individual cases and, as noted, comments on the site characterization analysis will be invited and will be reviewed, and such review may be the basis for the Director to express to DOE additional recommendations or objections.

Except for some editorial changes, other provisions of § 60.18 are the same as existing regulations.

10 CFR Part 60, Subpart C

This subpart deals with participation by State governments and Indian tribes in the Commission's licensing and pre-licensing activities. The role of the States and tribes in repository siting and development is addressed in great detail by several provisions in the Nuclear Waste Policy Act. While the Commission finds that some changes in Subpart C are needed in light of those provisions, it remains our intention to encourage close working relations with the States and tribes. The revisions are designed to clarify the means by which this can be accomplished in a manner conforming to the new law.

§ 60.61 Provision of information.

This section implements the requirement in the Waste Policy Act, Sec. 117(a), 42 U.S.C. 10137, that NRC furnish timely and complete information to host States and affected Indian tribes regarding its

determinations or plans. It applies, insofar as Commission responsibilities are concerned, from the time a site characterization proposal is submitted throughout the entire life of the repository through "decommissioning." Consistent with other usage in Part 60, the phrase "permanent closure, or decontamination and dismantlement of surface facilities" is used instead of the statutory term "decommissioning."

Some of the most significant communications may consist of determinations made in the course of licensing proceedings. Under our rules of practice, parties on the service list in such proceedings are required to be served with notice of all relevant pleadings, decisions, orders, etc. Accordingly, the Commission will use this established procedure as the means for providing information regarding licensing actions.

§ 60.62 Site review.

The Waste Policy Act establishes a structure for the involvement of States and affected Indian tribes. The proposed rule therefore provides explicitly for consultation with States and affected Indian tribes but omits mention of local governments. (However, the Commission anticipates, in light of the Waste Policy Act, see Sec. 116(c)(1)(B)(iv), 42 U.S.C. 10136, that the States would establish appropriate procedures to address local government and citizen concerns.)

Since the concerns of the States and affected Indian tribes will be dealt with primarily under the statutory consultation and cooperation procedures, the Commission has eliminated reference to any consultation activities by NRC that are more appropriately and directly carried out by DOE under those procedures. Thus, consistent with the Waste Policy Act, questions concerning DOE's site characterization submissions should be directed to DOE for its consideration and response, and notification concerning NRC meetings or consultations with DOE should be provided by DOE. Notwithstanding these changes, however, it remains the policy of the Commission that consultation with interested parties with respect to site characterization should be encouraged. As now, information would be available routinely with respect to NRC's views on the progress of site characterization, on NRC procedures, and on the development of proposals for participation in license reviews.

Although the Waste Policy Act does not provide formally for NRC activity prior to Presidential approval of an area for site characterization, and this is noted in revised § 60.62, there will be coordination during the earlier stages of site screening and site characterization in accordance with the Procedural Agreement between NRC and DOE; special provisions have been made in that agreement for States and Indian tribes to receive notice and to attend NRC/DOE meetings so as to enable them to engage knowledgeably, on an early and ongoing basis, in site characterization reviews.

The opportunity to request that the Director consult with respect to the NRC review of site characterization activities is not limited to prospective host States. The extent to which a State may be affected by the prospective location would, of course, be a factor for the Director to consider in determining the staff resources that would be made available for purposes of such consultation.

§ 60.63 Participation in license reviews.

This section is a substitute for the earlier §§ 60.62-60.65.

Section 60.63 acknowledges, first of all, that State and local governments and affected Indian tribes may participate in license reviews as provided in the Commission's rules of practice. Local governments are mentioned in this context because they may have standing, apart from the State in which they are located, to participate in a licensing proceeding as a party or participate in a more limited capacity. See 10 CFR §§ 2.714, 2.715(c).

The regulation retains a provision for a State or affected Indian tribe to submit a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The existing requirement that proposals be submitted no later than 120 days after docketing of a license application has been eliminated; although early submissions are desirable, we can readily conceive of cases in which proposals submitted after review of a license application could be implemented in the mutual interests of the proposing entity and the Commission. The types of services or activities that NRC might consider

providing would include those educational or information services and related actions that are set out in existing § 60.62(d).

The Commission has omitted those portions of existing § 60.62(c) that contemplate Commission funding of State work in support of the license review. In light of the Waste Policy Act, funding of such work to improve the State's capacity to review a license application is a responsibility of DOE and it is to be financed out of the Nuclear Waste Fund. We do not rule out the possibility that the NRC may contract with State governments on occasion for particular services that we may require in order to be able to discharge our statutory responsibilities effectively. The execution of such contracts would be carried out under established procurement procedures and would be subject to applicable limitations with respect to competitive bidding and avoidance of conflicts of interest. See 41 CFR Chapter I (Federal Procurement Regulations). A further reason for handling such contracts under the general procurement regulations rather than Part 60 is that the criteria for approval of proposals (existing § 60.63, proposed § 60.62(d)) would be inappropriate when the Commission's purpose is to acquire services which it needs in discharging its own reviewing functions.

Considering this limitation of the scope of NRC activities under Subpart C, the requirement for gubernatorial approval of a State proposal has been eliminated as being unnecessary. The information required to be included in the proposal has also been modified to conform to the limitation of scope. The Waste Policy Act may have further limited the opportunities for states to receive funding from the NRC, the Commission is of the view that Congress intended that DOE should assume the Federal responsibility for activities of the types described in Sections 116 and 118 and that such activities should be financed out of the Nuclear Waste Fund rather than out of NRC appropriations.

Existing § 60.64, pertaining to participation of Indian tribes, has been incorporated in the substantive provisions applicable to States. The change has been made for editorial reasons and is not intended to

affect the right of affected Indian tribes to participate like the States in the activities described in Subpart C.

Existing § 60.65, dealing with coordination of multiple proposals, has been deleted. The Commission deems it unlikely that multiple proposals of the kinds considered eligible for acceptance under Subpart C would present any undue administrative difficulties; the criteria for approval of proposals (especially the finding of a "productive contribution" to the license review) would afford the Director adequate discretion to take into account the desirability of avoiding duplication.

§ 60.64 Notice to States.

The Commission encourages the Governor and legislature of a State to jointly designate a single point of contact to receive notice and information from the Commission. This section provides for notice to such jointly designated nominees.

§ 60.65 Representation.

Under the present rule, the signature of the Governor would serve to document the authority pursuant to which proposals were being submitted to the Commission. Submissions by Indian tribes were to be accompanied by documentation of the eligibility of the tribe and the authority of its representatives. This section is designed to retain the principle of assuring that representatives are properly identified. With respect to States, a change is needed to reflect the fact that proposals will no longer need to be signed by the Governor. In the case of Indian tribes, the determination by the Secretary of the Interior that it is "affected" eliminates the need for the Commission to be concerned with its eligibility.

ENVIRONMENTAL IMPACT

This proposed rule is insignificant and nonsubstantive from the standpoint of environmental impact. Therefore, under the exemption set out in 10 CFR 51.5(d)(3), neither an environmental impact statement nor

an environmental impact appraisal and negative declaration is required for this proposed regulation.

PAPERWORK REDUCTION ACT STATEMENT

Sections 60.62 and 60.63 of this proposed rule amend information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). This rule will be submitted to the Office of Management and Budget for review and approval of the information collection requirements.

REGULATORY FLEXIBILITY ACT CERTIFICATION

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule relates to the licensing of only one entity, the U.S. Department of Energy, which does not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act.

LIST OF SUBJECTS IN 10 CFR PART 60

High-level waste, Nuclear power plants and reactors, Nuclear materials, Penalty, Reporting and recordkeeping requirements, Waste treatment and disposal.

ISSUANCE

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Nuclear Waste Policy Act of 1982, and 5 U.S.C. 553, the Nuclear Regulatory Commission proposes to adopt the following amendments to 10 CFR Part 60.

PART 60 - DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN
GEOLOGIC REPOSITORIES

1. The authority citation for Part 60 continues to read as follows:

AUTHORITY: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97-425, 96 Stat. 2228 (42 U.S.C. 10141).

For the purposes of Sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 60.71 to 60.75 are issued under Sec. 161, 68 Stat. 950, as amended (42 U.S.C. 2201).

2. Section 60.2 is revised by removing the definitions of "Indian tribe" and "Tribal organization" and inserting, in the appropriate alphabetical location, a definition of the term "affected Indian tribe" to read as follows:

§ 60.2 Definitions.

As used in this Part --

* * * * *

"Affected Indian tribe" means an affected Indian tribe as defined in the Nuclear Waste Policy Act of 1982.

* * * * *

3. Section 60.10 [Redesignated] § 60.15.

4. Section 60.11 [Removed].

5. Sections 60.16 through 60.18 are added to read as follows:

§ 60.16 Site characterization plan required.

Before proceeding to sink shafts at any area which has been approved by the President for site characterization, DOE shall submit to the Director, for review and comment, a site characterization plan for such area.

§ 60.17 Contents of site characterization plan.

The site characterization plan shall contain --

(a) A general plan for site characterization activities to be conducted at the area to be characterized, which general plan shall include --

(1) A description of such area, including information on quality assurance programs that have been applied to the collection, recording, and retention of information used in preparing such description.

(2) A description of such site characterization activities, including the following --

(i) The extent of planned excavations;

(ii) Plans for any onsite testing with radioactive or nonradioactive material;

(iii) Plans for any investigation activities that may affect the capability of such area to isolate high-level radioactive waste;

(iv) Plans to control any adverse impacts from such site characterization activities that are important to safety or that are important to waste isolation; and

(v) Plans to apply quality assurance to data collection, recording, and retention.

(3) Plans for the decontamination and decommissioning of such area, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities, if such area is determined unsuitable for application for a construction authorization for a geologic repository operations area;

(4) Criteria, developed pursuant to section 112(a) of the Nuclear Waste Policy Act of 1982 (or in the case of a geologic repository that is not subject to the Waste Policy Act, such other siting criteria

as may have been used by DOE), to be used to determine the suitability of such area for the location of a geologic repository; and

(5) Any other information which the Commission, by rule or order, requires.

(b) A description of the possible waste form or waste package for the high-level radioactive waste to be emplaced in such geologic repository, a description (to the extent practicable) of the relationship between such waste form or waste package and the host rock at such area, and a description of the activities being conducted by DOE with respect to such possible waste form or waste package or their relationship; and

(c) A conceptual design for the geologic repository operations area that takes into account likely site-specific requirements.

§ 60.18 Review of site characterization activities.*

(a) The Director shall cause to be published in the Federal Register a notice that a site characterization plan has been received from DOE and that a staff review of such plan has begun. The notice shall identify the area to be characterized and the NRC staff members to be consulted for further information.

(b) The Director shall make a copy of the site characterization plan available at the Public Document Room. The Director shall also transmit copies of the published notice of receipt to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe. In addition, the Director shall make NRC staff available to consult with States and affected Indian tribes as provided in Subpart C of this Part.

*In addition to the review of site characterization activities specified in this section, the Commission contemplates an ongoing review of other information on site investigation and site characterization, in order to allow early identification of potential licensing issues for timely resolution. This activity will include, for example, a review of the environmental assessments prepared by DOE at the time of site nomination. A procedural agreement covering NRC-DOE interface during site investigation and site characterization has been published in the Federal Register. 48 FR 38701, August 25, 1983.

(c) The Director shall review the site characterization plan and prepare a site characterization analysis with respect to such plan. In the preparation of such site characterization analysis, the Director may invite and consider the views of interested persons on DOE's site characterization plan and may review and consider comments made in connection with public hearings held by DOE.

(d) The Director shall provide to DOE the site characterization analysis together with such additional comments as may be warranted. These comments shall include either a statement that the Director has no objection to the DOE's site characterization program, if such a statement is appropriate, or specific objections with respect to DOE's program for characterization of the area concerned. In addition, the Director may make specific recommendations pertinent to DOE's site characterization program.

(e) If DOE's planned site characterization activities include onsite testing with radioactive material, the Director's comments shall include a determination, if appropriate, that the Commission concurs that the proposed use of such radioactive material is necessary to provide data for the preparation of the environmental reports required by law and for an application to be submitted under § 60.22 of this part.

(f) The Director shall publish in the Federal Register a notice of availability of the site characterization analysis and a request for public comment. A reasonable period, not less than 90 days, shall be allowed for comment. Copies of the site characterization analyses and of the comments received shall be made available at the Public Document Room.

(g) During the conduct of site characterization activities, DOE shall report not less than once every six months to the Commission on the nature and extent of such activities and the information that has been developed and on the progress of waste form and waste package research and development. The semiannual reports shall include the results of site characterization studies, the identification of new issues, plans for additional studies to resolve new issues, elimination of planned studies no longer necessary, identification of decision points reached and modifications to schedules where appropriate. DOE shall also report its progress in developing the design of a geologic repository operations

area appropriate for the area being characterized, noting when key design parameters or features which depend upon the results of site characterization will be established. Other topics related to site characterization shall also be covered if requested by the Director.

(h) During the conduct of site characterization activities, NRC staff shall be permitted to visit and inspect the locations at which such activities are carried out and to observe excavations, borings, and in situ tests as they are done.

(i) The Director may comment at any time in writing to DOE, expressing current views on any aspect of site characterization. In particular, such comments shall be made whenever the Director, upon review of comments invited on the site characterization analysis or upon review of DOE's semiannual reports, determines that there are substantial new grounds for making recommendations or stating objections to DOE's site characterization program.

(j) The Director shall transmit copies of the site characterization analysis and all comments to DOE made by him under this section to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe. When transmitting the site characterization analysis under this paragraph, the Director shall invite the addressees to review and comment thereon.

(k) All correspondence between DOE and the NRC under this section, including the reports described in paragraph (g), shall be placed in the Public Document Room.

(l) The activities described in paragraphs (a) through (k) above constitute informal conference between a prospective applicant and the staff, as described in § 2.101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as amended. Accordingly, neither the issuance of a site characterization analysis nor any other comments of the Director made under this section constitute a commitment to issue any authorization or license or in any way affect the authority of the Commission, the Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards, other presiding officers, or the Director, in any such proceeding.

6. Subpart C is revised to read as follows:

SUBPART C - PARTICIPATION BY STATE GOVERNMENTS AND INDIAN TRIBES

§ 60.61 Provision of information.

(a) The Director shall provide to the Governor and legislature of any State in which a geologic repository operations area is or may be located, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made by the Commission with respect to the site characterization, siting, development, design, licensing, construction, operation, regulation, permanent closure, or decontamination and dismantlement of surface facilities, of such geologic repository operations area.

(b) For purposes of this section, a geologic repository operations area shall be considered to be one which "may be located" in a State if the location thereof in such State has been described in a site characterization plan submitted to the Commission under this part.

(c) Notwithstanding paragraph (a), the Director is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

(d) Copies of all communications by the Director under this section shall be placed in the Public Document Room, and copies thereof shall be furnished to DOE.

§ 60.62 Site review.

(a) Whenever an area has been approved by the President for site characterization, and upon request of a State or an affected Indian tribe, the Director shall make NRC staff available to consult with representatives of such States and tribes.

(b) Requests for consultation shall be made in writing to the Director.

(c) Consultation under this section may include:

(1) Keeping the parties informed of the Director's views on the progress of site characterization.

(2) Review of applicable NRC regulations, licensing procedures, schedules, and opportunities for state participation in the Commission's regulatory activities.

(3) Cooperation in development of proposals for State participation in license reviews.

§ 60.63 Participation in license reviews.

(a) State and local governments and affected Indian tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter.

(b) In addition, whenever an area has been approved by the President for site characterization, a State or an affected Indian tribe may submit to the Director a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The proposal may be submitted at any time and shall contain a description and schedule of how the State or affected Indian tribe wishes to participate in the review, of what services or activities the State or affected Indian tribe wishes NRC to carry out, and how the services or activities proposed to be carried out by NRC would contribute to such participation. The proposal may include educational or information services (seminars, public meetings) or other actions on the part of NRC, such as establishing additional public document rooms or employment or exchange of State personnel under the Intergovernmental Personnel Act.

(c) The Director shall arrange for a meeting between the representatives of the State or affected Indian tribe and the NRC staff to discuss any proposal submitted under paragraph (b) of this section, with a view to identifying any modifications that may contribute to the effective participation by such State or tribe.

(d) Subject to the availability of funds, the Director shall approve all or any part of a proposal, as it may be modified through the meeting described above, if it is determined that:

(1) The proposed activities are suitable in light of the type and magnitude of impacts which the State or affected Indian tribe may bear;

(2) The proposed activities (i) will enhance communications between NRC and the State or affected Indian tribe, (ii) will make a productive and timely contribution to the review, and (iii) are authorized by law.

(e) The Director will advise the State or affected Indian tribe whether its proposal has been accepted or denied, and if all or any part of proposal is denied, the Director shall state the reason for the denial.

(f) Proposals submitted under this section, and responses thereto, shall be made available at the Public Document Room.

§ 60.64 Notice to States.

If the Governor and Legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and legislature separately.

§ 60.65 Representation.

Any person who acts under this subpart as a representative for a State (or for the Governor or legislature thereof) or for an affected Indian tribe shall include in his request or other submission, or at the request of the Commission, a statement of the basis of his authority to act in such representative capacity.

Dated at Washington, D.C., this _____ day of _____, 1984.

For the Nuclear Regulatory Commission.

Samuel J. Chilk
Secretary of the Commission

ENCLOSURE B

Staff Efforts to Obtain States' Views on the Proposed
Revisions to 10 CFR Part 60

On August 19, 1983, a meeting was held between the NRC staff and the representatives of first and second tier potential host States for high-level waste geologic repositories. At this meeting, an earlier draft of the proposed revisions to 10 CFR Part 60 dealing with site characterization and the participation of States and Indian tribes was distributed. In introducing the proposed revisions, the NRC Staff explained that the guiding principles behind the revisions were: a) there should be no substantial change in the principle of NRC relations with the States and Indian tribes; b) the revisions should reflect those changes which the Waste Policy Act calls upon NRC to make, and c) credibility demands that the regulations conform to the Waste Policy Act. An alternative approach, which proposed only minimal changes to 10 CFR Part 60 to bring definitions of terms into conformity with the Waste Policy Act, was also presented. States were asked to review the approaches and forward comments to NRC as soon as possible.

While State representatives had not had enough time for substantial consideration of the approaches, some initial reactions were expressed: States indicated a strong preference for formally established means for participation; they were concerned about any reduction in specificity and greater reliance on informal procedures; they expressed belief that informal procedures are subject to unilateral changes through personnel and policy shifts, and that State opportunities for interaction with NRC could be reduced thereby. In connection with this belief, States felt that not being able to comment formally on an NRC draft site characterization analysis would reduce the extent of State participation.

The NRC staff's response to these points was to urge States to identify to NRC those opportunities for participation which States felt would be lost as a result of the revisions. In reference to the draft site characterization analysis, the staff pointed out that there were other, more effective, means

by which States could influence the site characterization process than by formal comments on an NRC draft site characterization analysis.

As a result of the meeting, the staff made changes to the proposed revisions to accommodate State concerns where possible. The staff worked through the National Governor's Association to encourage detailed comments from the States. Letters have been received from Texas and Nevada transmitting comments. The Texas letter included specific proposed changes; an analysis of the Texas proposals, and the Staff's response, is contained in this enclosure. The letter from Nevada characterizes the earlier draft as an attempt to relegate the states' formal role in the license review and the site characterization plan analysis to the discretion of the Director; the subsequent revisions are also responsive to these Nevada concerns.

Copies of the letters from Texas and Nevada are also included in this enclosure.

[Analysis of Texas proposal on procedural amendments]

1. Site characterization analysis

Original proposal: Director reviews the site characterization plan and prepares a site characterization analysis. He "may invite and consider the views of interested persons and he may review and consider comments made in connection with public hearings held by DOE."

Texas recommendation: Director reviews the site characterization plan and prepares a site characterization analysis. In preparing the site characterization analysis, the Director will solicit comments; and he will review and consider comments received in response to such solicitation as well as comments and questions submitted to DOE (and DOE responses thereto) in the public hearings on the site characterization plan. The Director's response to comments would be included in the site characterization analysis. [Similarly, Nevada recommended that the

Director should formally request comments on the Site Characterization Plan directly from the states and public and should formally consider comments received.]

Revised proposal: The procedure contained in the original proposal is retained. In addition, the Director would invite States and tribes to comment on the site characterization analysis and the Director shall express further current views to DOE, upon review of comments received, if he determines that there are substantial new grounds for making recommendations or stating objections to DOE's site characterization program.

Rationale: The staff views the NRC review process as an ongoing one in which information is provided to NRC, and NRC comments are made to DOE, under the provision of the NRC/DOE Procedural Agreement, at the earliest practical occasion. There will be ample opportunity for the States to participate in this review process and to make their concerns known both to DOE and NRC. By the time a site characterization plan is submitted, it is expected that relevant issues would largely have been identified, and that the States would have been able to express views or questions on matters of particular concern. NRC has a responsibility then to make a timely response to the site characterization plan. Initiating a formal comment process is unnecessary because of the opportunity for States to have raised issues all along. Further, it would be undesirable because delays might result that could make the site characterization analysis outdated before it was even published because of the generation of new data during the review process.

States may find a site characterization analysis to have been inadequately responsive to their concerns. To deal with this, the staff now proposes that the Director will invite and consider comments, and will make his views known to DOE in the light of such comments; but that the solicitation of comments would be made at the time the site characterization analysis is published rather than in advance.

2. Consultation

Original proposal: Director shall endeavor, to the extent appropriate and practicable, to fulfill any written request for consultation with respect to any aspect of NRC's review of site characterization activities.

Texas recommendation: Director shall make staff available to keep States and tribes informed of his views on the progress of site characterization and notify them of further NRC meetings with DOE. Consultation will include review of NRC procedures and cooperation in developing proposals for State participations on license reviews. NRC will include response to State concerns in the site characterization analysis.

Revised proposal: Director shall make staff available for consultation including: (1) keeping parties informed of Director's views on progress of site characterization, (2) review of NRC regulations, and (3) cooperation in development of proposals for participation in license reviews.

Rationale: The staff believes that some flexibility needs to be reserved so as to assure that NRC's consultation activities are compatible with the statutory consultation and cooperation process. The original proposal accomplished this, but it failed to express adequately the intention to maintain good communications. To correct this deficiency, the revised proposal largely adopts the Texas recommendation. The principal substantive differences are the omission of the reference to the site characterization analysis (for the reasons already discussed) and the omission of the provision regarding notification of meetings with DOE (more appropriately a DOE responsibility under the Waste Policy Act).

3. Proposals for State/Indian participation

Original proposal: Proposals may be submitted for NRC to provide services, or take other action, for the purpose of enhancing its communications with States/tribes and contributing productively to the

license review. NRC will respond, with an explanation for any proposal (or part thereof) which has been denied.

Texas recommendation: Proposals may be submitted for State participation in the review of DOE submissions. Proposals will describe issues which State wishes to review and information which State plans to submit to NRC. Proposals will be approved, if not prohibited by law, if they will enhance communications between NRC and the States [or tribes] and contribute productively to the NRC review. NRC will provide explanation for any proposal (or part thereof) that is rejected, with the party aggrieved by such rejection afforded a right of appeal to the Commission. [Nevada urged retention of the formal role for States in the license review process as described in existing Part 60.]

Revised proposal: Proposals may be submitted to facilitate State/tribal participation in the review of DOE submissions. Proposals will describe how the State/tribe wishes to participate, what services or activities the State/tribe wishes NRC to carry out, and how the NRC services or activities would contribute to State/tribal participation. Proposals will be approved, if authorized by law, if the proposed activities are suitable in light of impacts on the State/tribe, are not eligible for DOE assistance under the Waste Policy Act, will enhance communications between NRC and the State/tribe, and will contribute productively to the license review. NRC will provide an explanation for any proposal (or part thereof) that is rejected.

Rationale: The Texas recommendation would retain more of existing Subpart C than the original staff proposal would have. The revised proposal largely accommodates the Texas approach. However, one qualification which the staff has added, taking the new law into account, is that the eligibility for DOE assistance under the Waste Policy Act would be a factor bearing upon the availability of assistance from NRC under Subpart C. Also, the staff declined to include an express right of appeal to the Commission in case a State/tribal proposal is rejected; the staff proposal is consistent, in this regard, with existing Subpart C.

C. Prichard



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MARK WHITE
GOVERNOR

OFFICE OF THE GOVERNOR

STATE CAPITOL
AUSTIN, TEXAS 78711

'83 SEP 12 A1:25

September 9, 1983.

WM Record File

105.2

WM Project

Docket No.

PDR

LPDR

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(Return to WM, 623-SS)	W Kerr		CZ

Mr. Robert Browning
Nuclear Regulatory Commission
Washington, D.C. 20555

RE: Procedural Amendments to Nuclear Regulatory Commission 10 CFR 60,
Disposal of High-Level Radioactive Wastes in Geologic Repositories

Dear Mr. Browning:

We have reviewed the draft materials distributed to state representatives at the meeting on August 19, 1983, at Dallas, and evaluated the various proposals relative to our interests in participating in Nuclear Regulatory Commission activities and decisions as they relate to disposal of high-level nuclear wastes in geologic repositories. We have also reviewed the existing appropriate sections of 10 CFR 60 to determine whether amendments are needed to have the rule conform to provisions of the Nuclear Waste Policy Act of 1982. We have determined that, while some minimal level of amendment to procedure is needed to achieve conformity with the Act, further amendment may be appropriate to enhance the efficiency and maintain the substance of an assured opportunity for interaction between an interested state and NRC.

We have chosen as a format for a response to your request for comment, a revision, in rule form, of the appropriate sections of 10 CFR 60. You will find this draft revision attached. Much of it will be familiar to you, as we have drawn heavily from sections of the existing 10 CFR 60, as well as from the two draft proposals presented in the Dallas meeting. Our focus was largely on Section 60.11 and Subpart C of the rule, as was yours, but you will note some major conceptual variation from your 8/17/83 Draft. I think you will find the proposal, overall, to be supportive of my statement in the Dallas meeting to the effect that we and other states are seeking an assured access to NRC activities and decisions that affect us as potential host states for a high-level nuclear waste repository. We also want that access to be one that does not result in an unnecessary burden on the NRC or the states, yet will result in a full and constructive relationship between the parties.

Mr. Robert Browning
September 9, 1983
Page 2

You will note in the attached proposed rule amendments that we have developed a procedure that removes the existing requirement for NRC to write and submit for public review a Draft Site Characterization Analysis. While we prefer the draft SCA process now standing in 10 CFR 60, we also recognize the advisory nature of the SCA and the need to expedite its transmittal to DOE. Thus we view our proposal to contain an acceptable alternative process by which substantially the same results can be achieved by NRC and the states, but in a manner that is less consumptive of time and resources on the part of all parties.

Our proposed changes to Subpart C, we think, preserve the opportunity for formal interaction between parties, while establishing a more permissive means of achieving that interaction. In addition, we have attempted to include only those provisions of the existing Subpart C that seem appropriate in light of the provisions of the Nuclear Waste Policy Act.

We appreciate the opportunity to respond to your draft proposals regarding NRC Rule 10 CFR 60. If you have questions or comments regarding our proposal please do not hesitate to contact me. I will be happy to discuss this matter further with you and your staff, at your convenience.

Sincerely,



Steve Frishman, Director
Nuclear Waste Programs Office

SF:dz

Enclosure

cc: Mr. Holmes Brown, National Governor's Association

10 CFR PART 60 - DISPOSAL OF HIGH-LEVEL WASTES IN GEOLOGIC REPOSITORIES

1. The Authority citation for Part 60 continues to read as follows:

AUTHORITY: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95-601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); sec. 121, Pub. L. 97-425, 96 Stat. 2228 (42 U.S.C. 10141).

2. Section 60.2 is revised by inserting, in the appropriate alphabetical location, a definition of the term "affected Indian tribe."

As revised, §60.2 reads:

60.2 Definitions.

As used in this part --

* * * * *
"Affected Indian tribe" means an affected Indian tribe as defined in the Nuclear Waste Policy Act of 1982.
* * * * *

3. Section 60.2 is further amended by deleting the definitions of "Indian tribe" and "Tribal organization."

4. Section 60.10 is redesignated as §60.15.

5. Section 60.11 is deleted.

6. Sections 60.16 through 60.18 are added to read as follows:

§60.16 Site characterization plan required.

Before proceeding to sink shafts at any area which has been approved by the President for site characterization, DOE shall submit to the Director, for review and comment, a site characterization plan for such area.

§60.17 Contents of site characterization plan.

The site characterization plan shall contain:

(a) A general plan for site characterization activities to be conducted at the area to be characterized, which general plan shall include:

(1) A description of such area, including information on quality assurance programs that have been applied to the collection, recording, and retention of information used in preparing such description.

(2) A description of such site characterization activities, including the following:

(i) The extent of planned excavations;

(ii) Plans for any onsite testing with radioactive or nonradioactive material;

(iii) Plans for any investigation activities that may affect the capability of such area to isolate high-level radioactive waste;

(iv) Plans to control any adverse impacts from such site characterization activities that are important to safety or that are important to waste isolation and

- (v) Plans to apply quality assurance to data collection, recording, and retention.
 - (3) Plans for the permanent closure, decontamination, and dismantlement of surface facilities and for the mitigation of any significant adverse environmental impacts caused by site characterization activities, if such area is determined unsuitable for application for a construction authorization for a geologic repository operations area;
 - (4) Criteria, developed pursuant to section 112(a) of the Nuclear Waste Policy Act of 1982, to be used to determine the suitability of such area for the location of a geologic repository; and
 - (5) Any other information which the Commission, by rule or order, requires.
- (b) A description of the possible waste form or waste package for the high-level radioactive waste to be emplaced in such geologic repository, a description (to the extent practicable) of the relationship between such waste form or waste package and the host rock at such area, and a description of the activities being conducted by DOE with respect to such possible waste form or waste package or such relationship; and
 - (c) A conceptual design for the geologic repository operations area that takes into account likely site-specific requirements.

§60.18 Review of site characterization activities

- (a) The Director shall cause to be published in the Federal Register a notice that a site characterization plan has been received from DOE and that a staff review of such plan has begun. The notice

shall identify the area to be characterized and the NRC staff members to be consulted for further information.

- (b) The Director shall make a copy of the site characterization plan available at the Public Document Room. The Director shall also transmit copies of the published notice of receipt to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe.
- (c) (1) The Director shall review the site characterization plan and prepare a site characterization analysis with respect to such plan.
(2) The Director shall, in the Federal Register notice provided for in Section 60.18(a), request comment from affected states, Indian tribes, and interested persons which he will review and consider in preparing the site characterization analysis and additional comments and recommendations.
(3) The Director shall also review and consider comments and questions submitted in the DOE public hearings held according to Section 113(b)(2)(B) of the Nuclear Waste Policy Act of 1982, and the Director shall review and consider DOE responses to such questions and comments in his preparation of the site characterization analysis and additional comments and recommendations.
- (d) The Director shall provide to DOE his site characterization analysis, together with a summary of comments received under Section 60.18(c)(2) and his response to those comments, and such additional comments as may be warranted. Such comments shall include either a statement

that the Director has no objection to the DOE's site characterization program, if such a statement is appropriate, or specific objections with respect to DOE's program for characterization of the area concerned. In addition, the Director may make specific recommendations pertinent to DOE's site characterization program.

- (e) If DOE's planned site characterization activities include onsite testing with radioactive material, the Director's comments shall include a determination, if appropriate, that the Commission concurs that the proposed use of such radioactive material is necessary to provide data for the preparation of the environmental reports required by law and for an application to be submitted under §60.22 of this part.

(NOTE: 60.22 appears to need revision to support Subsection (e))

- (f) The comments of the Director under this section shall not constitute a commitment to issue any authorization or license or in any way affect the authority of the Commission, the Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards, other presiding officers, or the Director, in any proceeding under Subpart G of Part 2 of this chapter.
- (g) During the conduct of site characterization activities, DOE shall report not less than once every six months to the Commission on the nature and extent of such activities and the information that has been developed and on the progress of waste form and waste package research and development. The semiannual reports shall include the results of site characterization studies, the identification of new issues, plans for additional studies to resolve

new issues, elimination of planned studies no longer necessary, identification of decision points reached and modifications to schedules where appropriate. DOE shall also report its progress in developing the design of a geologic repository operations area appropriate for the area being characterized, noting when key design parameters or features which depend upon the results of site characterization will be established. Other topics related to site characterization shall also be covered if requested by the Director.

- (h) During the conduct of site characterization activities, NRC staff shall be permitted to visit and inspect the locations at which such activities are carried out and to observe excavations, borings, and in situ tests as they are done.
- (i) The Director may comment at any time in writing to DOE, expressing current views on any aspect of site characterization. Comments received in accordance with this Section and Section 60.64 shall be considered by the Director in formulating his views.
- (j) The Director shall transmit copies of the site characterization analysis including the comment summary and response required under Section 60.18(d), all comments to DOE made by him under this section to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe.

- (k) All correspondence between DOE and the NRC under this section, including the reports described in paragraph (g), shall be placed in the Public Document Room.
- (l) The activities described in paragraphs (a) through (k) above constitute informal conference between a prospective applicant and the staff, as described in §2.101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as amended.

10CFR60, SUBPART C-PARTICIPATION BY STATE GOVERNMENTS AND INDIAN TRIBES

Section 60.61. Provision of Information

- (a) The Director shall provide to the Governor and Legislature of any State containing a site which has been approved for site characterization, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made by the commission with respect to the site characterization, siting, development, design, licensing construction, operation, regulation, permanent closure, decontamination, and dismantlement of surface facilities of any proposed repository at such site.
- (b) Notwithstanding paragraph (a), the Director is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to part 2 of this chapter.
- (c) Copies of all communications by the Director under this section shall be placed in the Public Document Room and copies thereof shall be furnished to DOE.

Section 60.62 Site Review

- (a) Upon approval of a site for site characterization and upon request of a state, or Indian tribe, the Director shall make available NRC staff to consult with representatives of states and Indian tribes to keep them informed of the Director's view on the progress of site characterization

and to notify them of any subsequent meetings or further consultations with the Department of Energy.

- (b) Requests for consultation shall be made in writing to the Director.
- (c) Should the State, Indian tribe, or other interested person direct questions or comments in accordance with section 60.18(c)(2) to NRC concerning the preparation of the site characterization analysis, the Director shall review and consider such comments and questions in the preparation of the site characterization analysis. In addition, he shall summarize and respond to such comments and questions and provide such summary and response to DOE in accordance with Section 60.18(d).
- (d) Consultation under this section may include, among other things, a review of applicable NRC regulations, licensing procedures, potential schedules, and the type and scope of State activities in the license review and site characterization plan review. In addition, staff shall be made available to cooperate with the State in developing proposals for participation by the State.

Section 60.63 Filing of Proposals for State Participation

- (a) State and local governments and affected Indian tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter.
- (b) States in which sites have been approved for site characterization may submit to the Director a proposal for State participation in the review of the site characterization activity reports and/or license application.

A state's proposal to participate may be submitted at any time prior to docketing of an application or up to 120 days thereafter.

- (c) Proposals for participation under this Subpart shall be made in writing and signed by the Governor of the State or the official designated by State law or by joint designation of the governor and legislature.
- (d) Items which may be presented for consideration, in whole or in part, subject to revision by the State, in a proposal for State participation include but are not limited to:
 - (1) A general description of how the State wishes to participate in the review and a preliminary identification of issues which it wishes to review.
 - (2) A preliminary description of material and information which the State plans to submit to the NRC staff for consideration in the review.
 - (3) Services or actions which the State may request such as seminars, public meetings, additional Public Document Rooms, or employment or exchange of State personnel under the Intergovernmental Personnel Act.

Section 60.64 - Approval of Proposals

- (a) The Director and a representative of the State shall jointly arrange for meetings between the representatives of the State and the NRC staff to

discuss any proposal submitted under Section 60.63(b), with the primary goal of identifying any modifications that may contribute to the effective participation by the State.

- (b) The Director shall approve all or any part of a proposal as it may be modified through the meetings described above if it is determined that the proposed activities:
 - (1) will enhance communications between NRC and the State,
 - (2) will contribute productively to the license review and/or site characterization activity report reviews, and
 - (3) are not prohibited by law.
- (c) The decision of the Director shall be transmitted in writing to the Governor or designated official of the originating State. A copy of the decision shall be made available at the Public Document Room. If all or any part of a proposal is rejected, the decision shall state the reason for the rejection.
- (d) The State originating the proposal may appeal the rejection of all or any part of a proposal to the Commission.
- (e) A copy of all proposals received shall be made available at the Public Document Room.

Section 60.65 Participation by Indian Tribes

(NO CHANGES SUGGESTED IN THIS SECTION)

Section 60.66 Notice to States. If the Governor and Legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and Legislature separately.

Section 60.67 Coordination

The Director may take into account the desirability of avoiding duplication of effort in taking action on multiple proposals submitted pursuant to the provisions of this Subpart to the extent this can be accomplished without substantial prejudice to the parties concerned.

RICHARD H. BRYAN
Governor

STATE OF NEVADA



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DEPARTMENT OF MINERALS

400 W. King Street, Suite 100
Carson City, Nevada 89710
(702) 885-5050

September 14, 1983

Mr. Robert Browning, Acting Director
Division of Waste Management
Nuclear Regulatory Commission
MS-623-FS
Washington, D.C. 20535

WM Record File
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Docket No. _____
FOR _____
LPDR _____

Distribution: REC RM
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HM CME
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Dear Mr. Browning:

I am writing to express concern on behalf of the State of Nevada regarding the consideration of the Commission to re-open rulemaking on 10 CFR 60. While the State recognized that some semantical revisions may be necessary to conform to the language of the Nuclear Waste Policy Act of 1982, the draft proposed rule that was discussed at our meeting in Dallas, Texas causes concern in two areas.

First, the State would be concerned with efforts by the Commission that attempt to diminish the formal role for states in the license review process as described in the current rule. It would seem that the Commission's intent in the draft proposed rule is to relegate the states' roles in this process to a discretionary status rather than the more formalized role that exists currently.

Secondly, the State would be concerned should the Commission eliminate the opportunity for the states and public to formally submit comments to the Commission on DOE's site characterization plan, and to have those comments formally considered. Although the Act provides for public comment to DOE on the aforementioned site characterization plan and associated public hearing, the State of Nevada believes that the Director should formally solicit comments directly from the states and public, independent of the DOE process.

In summary, the State of Nevada would be quite concerned with the elements of the draft proposed rule that would relegate State participation in the license review process and in the site characterization plan analysis to a role that is left to the Director's discretion. While the discussion in the draft proposed rule focuses upon areas where a duplicative effort with DOE might occur, I believe that the uncertainties inherent in geologic waste disposal warrant the risk and cost of such duplication should it occur.

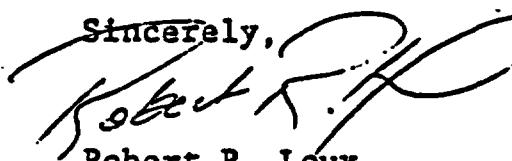
Mr. Robert Browning
September 14, 1983

Page Two

I want to thank you for providing the State of Nevada the opportunity to comment on this draft proposed rule and hope that you have found my comments useful.

Should you have any questions, please do not hesitate to contact me.

Sincerely,



Robert R. Loux
Nuclear Waste Evaluation Program

RRL:sk

ENCLOSURE C

Staff Efforts to Obtain Views of Public Interest
Groups on the Proposed Revisions to 10 CFR Part 60

One informal comment letter was received from David Berick of the Environmental Policy Institute, following the meeting in Dallas with State representatives (copy attached). On September 29, 1983, a meeting was held with Mr. Berick, B. Yaeger, Sierra Club, and B. Finamore, NRDC, to discuss the concerns of the Public Interest Groups regarding the proposed revisions to Part 60 that were discussed in the Dallas briefing.

In the discussions, the concerns of the Public Interest Groups (Groups) centered primarily around the proposed deletion of required information about the site selection process from the content of the Site Characterization Plan. (Under the Waste Policy Act, this type of information now appears in the Environmental Assessments (EAs) required by the statute at the time sites are nominated.) The Groups saw the review of the site selection process in the Site Characterization Plan as an opportunity to examine how DOE selected the three sites to be characterized. The NRC staff explained that it believed reviewing these matters in the Site Characterization Plan (SCP) was too late in the process, since EAs would have been written, public meetings to discuss site selection would have been held, and the recommendation of sites to be characterized would be reviewed and approved by the President prior to submittal of the SCP to NRC. The staff described its intent to review and comment on the draft EAs so that its views on the quality of the data available and identification of the potential licensing issues would be known early enough in the site selection process so that they could be considered when siting decisions were made by DOE and the President. The staff explained that these earlier steps specified in the Waste Policy Act were what it had in mind when it stated that the SCP was submitted at a later point in the schedule.

As a result of these discussions a footnote has been added to the rule which states that NRC will review the environmental assessments prepared by DOE. Amendments to 10 CFR 51 dealing with NEPA issues will be proposed in the near future and will consider issues raised in the Berick letter.

Clark

Environmental Policy Institute
317 Pennsylvania Ave. S.E. Washington, D.C. 20003
202/544-2600

September 21, 1983

Dear Bob,

Sorry for the delay in getting this over to you and for some of the strong language, but I have gone over the proposed revision several times and think that there are some very serious problems with what has been proposed and the way it has been proposed.

Sincerely,

Dar Clark

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9/20/83

To: Interested Parties

From: David Berick, Environmental Policy Institute

Re: Comments on Draft NRC Revisions to NRC High-Level Waste Licensing Regulations(10 CFR Part 60)(8/17/83 NRC Draft)

A charitable interpretation of the 8/17/83 draft of revisions to Part 60 would be that the staff has greatly exaggerated the differences between the Nuclear Waste Policy Act(NWPA) and the current version of Part 60 and has proposed changes that do not accurately reflect either the intent of the Nuclear Waste Policy Act or the conduct of the federal nuclear waste program in practice. The proposed changes could also be read to suggest a deliberate and drastic effort to limit the scope and independence of NRC's authority and review of the DOE HLW program. Although the draft suggests that the revisions are based on the past three years of history with the federal waste program, one might conclude that there are some in the NRC staff who have a distinctly revisionist view of that history and wish to circumvent the type of solid, independent review conducted by the NRC staff of the DOE's program notably of the Hanford SCR.

Issue 1) Exclusion of NEPA Considerations

The draft revisions propose to exclude, and defer until a later procedure, the incorporation of NEPA considerations. Taken on its face, this is a serious flaw. Part 60, as now constructed, strongly reflects the need by the Commission for information on site suitability and on alternative sites to carry out its NEPA responsibilities. In promulgating Part 60, the Commission recognized that its ability to make a NEPA determination would rely heavily on the suitability of DOE's candidate sites. The Commission also recognized that consideration of alternatives and the suitability of DOE's sites "might indeed be appropriate, where necessary or desirable to protect health." (46 FR 13972, 2/25/81). Those responsibilities are not diminished, in any way, by the Nuclear Waste Policy Act(NWPA). Among other considerations, Section 114(f) of the NWPA reaffirms NRC's NEPA and health and safety responsibilities under both the Atomic Energy Act and the Energy Reorganization Act.

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It is also important to note, that under the NWPA, compliance with NEPA constitutes a limitation for site characterization activities. Section 113(c) clearly restricts DOE from carrying out any activities during characterization not required "for evaluation of the suitability of such candidate site for an application to be submitted to the Commission...and for compliance with the National Environmental Policy Act of 1969(42

U.S.C. 4321 et seq.)" NRC must review this issue in the site characterization plan and it must also be certain that the DOE program leading to application addresses the Commission's need to fulfill NEPA. The Commission must also concur in the use radioactive materials as part of those activities. It is not possible, in my view, to separate these NEPA-related aspects of site characterization directly aimed at fulfilling DOE's NEPA and NWPA responsibilities from the NRC's own NWPA and NEPA review authorities.

As a result, I am lead to conclude that the NRC proposal to exclude NEPA considerations from a revised Part 60 is an improper and inappropriate procedure. I must also point out that the exclusion of NEPA related issues, such as site suitability and alternative sites, is used to justify a proposed limitation of the scope of the site characterization plan and the Commission's review of DOE site characterization activities. The proposal sets up a Catch-22 situation wherein NEPA issues cannot be considered because they are deferred to a future rulemaking while at the same time the Commission does "consider" such issues and deletes them altogether from the Commission's Part 60 licensing regulations; a decision that cannot be addressed.

As elaborated below, the exclusion of NEPA considerations at the site characterization stage, coupled with a decidedly erroneous conclusion that the NWPA requires submission of the site characterization plan at a later time in the repository siting schedule than the current version of Part 60, leads to a drastic limitation of NRC's independent review of DOE's program at the site characterization stage. The proposed revision would drastically reduce the scope of the site characterization plan and NRC review specifically in the area of site suitability and alternatives issues.

(Note: It is ironic that the authors of the proposed revision have constructed an extensive, if somewhat questionable, argument for the revision of Part 60 based on the statutory interpretation of the NWPA and "further understanding and experience gained over the past three years" (pp. 2-3), yet overlook a statutory requirement which would require possible revision of Part 60 to conform to general environmental standards to be promulgated by EPA(Section 121 of NWPA).

Issue 2) Contention That NWPA Requires Site Characterization Review at a Later Point in the Schedule

The proposed revision repeatedly contends that the NWPA requires DOE to submit its site characterization plan to the NRC at a later point in time than the current version of Part 60. The argument and presentation of this contention in the proposal can at best be characterized as misleading and, at worst, as deceitful. The proposal constructs an elaborate and pervasive argument that the current version of Part 60 requires submission of DOE's site characterization report "as early as possible after the commencement of planning" whereas the NWPA requires such

submission "prior to sinking a shaft" for characterization. Unfortunately, this argument is based on a persistent, and one must conclude deliberate, misrepresentation of both Part 60 and the NWPA.

First, and perhaps most egregious in this regard, the text of the proposal misrepresents the current version of Part 60 throughout, and without exception. At no time, including on page 8 of the text where the current version of Part 60 is described on the issue of timing, does the proposal accurately and completely quote Part 60. Without exception the first sentence of Section 60.11 of Part 60, which is central to this issue, is cited and quoted incompletely and without inclusion of the operative phrase "prior to site characterization." With the exception of the text on page 8, the proposal also fails to cite the language of Section 60.11 to the effect that such "planning" is "for a particular geologic repository operations area" invariably implying that "planning" for site selection is the trigger for submission of the site characterization report. Nothing could be farther from the truth and a straightforward reading of Section 60.11 makes this clear.

Rather than the case portrayed in the proposed revision in which the NWPA has a dramatically different submission date from Part 60, the only distinction that genuinely exists between the two is language stating that submission takes place "prior to sinking a shaft"(for characterization)(NWPA) and "prior to site characterization"(Part 60). Any effective difference, small as it may be, between these two operative phrases is further limited by the definitions and substance of the appropriate provisions of the NWPA and Part 60, as discussed below.

Although Part 60 includes a range of activities, other than "sinking a shaft", that might be construed to trigger submission of DOE's characterization materials by an overly anxious reader, the definition of "site characterization" in Part 60 clearly excludes "preliminary borings and geophysical testing needed to decide whether site characterization should be undertaken."(Sec. 60.2(p)). This limitation is significant. Despite the suggestion in the proposed revision that Part 60 requires submission at a preliminary planning stage, Part 60 does not require submission, in any event, prior to conduct of activities to identify a site for characterization. The contention in the proposal that the NWPA creates a new procedure wherein DOE will have already selected sites for characterization before the initiation of DOE's characterization paperwork is erroneous. The definitions of site characterization in the NWPA and Part 60, and the exclusion of activities "needed to decide whether site characterization should be undertaken," are virtually identical. Part 60 also predicates site selection of a "particular geologic operations area"; a specific location within a site comparable to the location of characterization area.

Furthermore, little practical distinction, if any, can be made between the NWPA and Part 60 as to when the DOE would

actually have to initiate its site characterization report or plan and when the NRC would need to receive such a submission. As the NRC proposal acknowledges on page 19, the site characterization plan must be submitted to the NRC "...sufficiently far in advance so that comments may be developed and submitted back to DOE early enough to be considered when shaft sinking occurs..." If anything, the schedule in the NWPA which requires identification of sites to be characterized by January 1, 1985 and completion of site selection in 1987 or 1988(obviously including preparation of the site characterization plan and NRC's timely review and comment)would suggest that delaying DOE's submission to a point in time just prior to sinking the shaft would present neither DOE nor NRC with sufficient time to complete the paperwork and review.

The statement in the proposed revision on page 19 concerning the need for DOE's timely submission borders on the hypocritical given the lengths to which the authors have gone to argue against timely submission as required in Part 60. The scheduling "fix" proposed in the revision--the deletion of the draft site characterization assessment because of the "scheduling mandates of the Waste Policy Act" pleaded on page 21 of the draft--revision has a decidedly hollow ring.

Additional concerns over the proposed restriction of NRC's site characterization review are discussed below, but it is worth noting here that under the NRC's current Part 60 review procedures the issuance of a draft staff assessment would add three to four months at most to the review period. The value of an independent NRC staff assessment with opportunity for public comment far outweighs this minor schedule delay; a position taken by the NRC when Part 60 was promulgated. The proposed revision effectively repudiates the Commission's earlier finding that the provision of an opportunity for public comment alleviated, in part, the need for a formal licensing action at this early stage while providing "...early Commission, State and public involvement without undue schedule delays."(44 FR 70409, December 6, 1979).

In developing the current Part 60 requirement for a draft assessment with public comment the Commission considered conducting this preliminary licensing step under its Early Site Review(ESR) regulations (10 CFR Part 2 Subpart F) with the objective of resolving siting issues. The Commission recognized that the unique circumstances of siting of a geologic repository precluded resolution of such issues at this early stage. However, the Commission did find that while the site characterization stage did not constitute an appropriate point to conduct a formal adjudicatory licensing proceeding, this stage did represent an critical first step in the licensing process for geologic repositories. By removing the opportunity for public comment of the draft assessment, the proposed revision alters the basic role of the NRC as independent regulator balancing the views of DOE and interested parties. Instead, the NRC assessment that emerges from the proposed revision appears inescapably to be

little more than a negotiated agreement between the NRC and the DOE staff(see additional comments below).

Issue 3) NRC Role in Site Screening and Selection

The draft revision argues that the NWPA "...makes no specific provision for the Commission to engage in, or independently review, the politically sensitive processes of site screening and site selection."(page 14 of draft). Once again, the proposal leans on selective interpretation to extend support for the authors' policy predilections where none exists. The proposal draws an entirely artificial distinction between those "politically sensitive" aspects of the site selection process which precede submission of the site characterization plan and those that follow. The NWPA makes no such distinction and in fact the site selection process for the second repository must necessarily include two sites already characterized(and not selected)for the first repository, thereby guaranteeing prior NRC "involvement" in this "politically sensitive"stage(see Sec. 114(f)).

What the NWPA does suggest is that the entire process of identifying potential sites to final site selection after characterization and state concurrence or "veto" is part of a single site selection process leading the submission of a repository construction permit application to the Commission. There is nothing about the selection of a final site, a decision that the Commission is party to, that suggests that it is any less "sensitive". The concern here, of course, is not whether or not the Commission engage in politically controversial issues, but whether it has a basis for withdrawing itself from the review and oversight of DOE's process for selecting sites for nomination and characterization. The argument drawn by implication that certain site selection activities are more or less "political" and not appropriate for Commission involvement does not hold water.

Similarly, the argument that no specific role is given to the NRC in the NWPA until the site selection plan is submitted is refuted by the Commission's own action in entering a memorandum-of-understanding with DOE covering this specific period in time--the so-called "Procedural Agreement"(48 FR 38701, August 25, 1983). It is worth noting that the Procedural Agreement cites, as justification, conformance with the NWPA for this "early" NRC/DOE interaction and oversight process. The NRC cannot, in my view, interpret the NWPA both ways; as limiting the early initiation of NRC oversight as suggested in the proposed revision of Part 60, and authorizing such early intervention as spelled out in the Procedural Agreement. The Commission, in fact, has long recognized the need to be involved as early as possible in the oversight of the DOE program; a fact underscored by the procedural agreement and articulated in Part 60. Early involvement is virtually essential given the largeenormous site selection program mandated by the NWPA and not contemplated by Part 60; the siting of two repositories from pools of five nominated sites.

A corollary issue to early NRC review is the proposal to defer the issue of Commission comment on the DOE's environmental assessments at the site nomination until a future proceeding concerning NEPA issues. As noted earlier, consideration of NEPA related issues should not be deferred nor should deferral serve as an excuse for adopting a policy, de facto, that the Commission will not engage in oversight and review of key site selection issues such as the nomination of site and the preparation of Environmental Assessments.

Issue 4) Scope of NRC Review

The proposed revision of Part 60 dramatically limits the scope of the NRC review of the DOE's site characterization activities notably limiting the information and issues to be included in the site characterization plan. The proposal states that the NWPA neglects to include "the method by which the site was selected for characterization, the identification and location of alternative media and sites at which DOE intends to conduct site characterization, and a description of the decision process by which the site was selected for characterization." These characterization plan components, the proposal concludes, should therefore be excluded.

As in many other cases in this proposal, the authors rely upon a questionable argument to make their case, i.e. these factors are spelled out in detail in an NRC rule(Part 60) and are not spelled out in equal detail in statute(the NWPA), therefore they are to be excluded. In the process, the proposal makes what can only be described as a gratuitous interpretation of the statutory language authorizing the inclusion of these very factors, i.e. Section 113(b)(1)(A)(iv) which includes, in the contents of the site characterization plan, "criteria to be used to determine the suitability of such candidate site for the location of a repository, developed pursuant to section 112(a)."

The proposal not only chooses to ignore this requirement and the clear opportunity to incorporate the "questionable" site selection factors under this category, but on page 30 of the text the authors make the gratuitous statement that complying with this section would entail "merely stating the criteria, which are the DOE siting guidelines described in Section 112(a) of the Waste Policy Act" and this "might appear to have little purpose.

There is no statutory language to support the interpretation in the proposed revision of Part 60. and it is highly questionable that incorporation of criteria used to determine the suitability of a site to be characterized would merely be the reiteration of the DOE's site selection guidelines. Neither Section 112(a) nor Section 113 of NWPA equate "criteria" with the "general guidelines" authorized in that Section. A more practical reading of this provision would be as a requirement to elaborate how the DOE selected the specific site in question and how the DOE guidelines were applied in that process.

As the NRC staff is well aware, DOE has repeatedly balked at establishing a site-specific methodology for applying the Section 112 guidelines to say nothing of incorporating such methodology in the guidelines. This has been a major point of controversy regarding the DOE guidelines. Equally important, DOE has not proposed a definitive process for selecting the three sites to be characterized from the pool of five nominated sites nor assurance that such a decision will be subject to adequate independent review. The NRC identified these same problems, the application of site selection guidelines to specific site selection decisions including the selection of the three sites to be characterized, in its comments to the DOE (Letter of April 7, 1983 from R.E. Browning to R.L. Morgan and NRC Staff Comments dated April 1, 1983).

In view of the controversy surrounding this issue and the NRC's own comments to DOE, one is left with a sense of disbelief at the authors' feigned ignorance, expressed on page 30, as to the purpose of Subsection (iv) and their failure to give that statutory language its full weight. As if to add insult to injury, the proposal makes light of the inclusion of Subsection(v) requiring the DOE to include in the site characterization plan "any other information required by the Commission." The inclusion of Subsection(v) demonstrates that list of factors in Section 113(b) to be included in the site characterization plan is not all inclusive as suggested in the proposed revision and certainly Section 113(b) does not require the exclusion of information or factors not elaborated upon in detail in Section 113(b). Section 113(b) clearly allows, if not requires under Subsection(iv), the inclusion of the types of site selection information determined in the proposed revision to be ripe for exclusion and Subsection(v) clearly authorizes the NRC to require such information.

Issue 5) NRC Independence and Public Participation

As noted in my remarks above under Issue 2, the proposed revision alters the Commission's independent relationship to the DOE waste program. The most obvious case is the deletion of the draft assessment of the site characterization report. Whereas Part 60 now considers the submission and review of the site characterization report a means for all interested parties including states and the public to review the adequacy of the NRC staff assessment, the proposed revision creates a situation wherein the NRC review and assessment is no longer the subject of comment by "interested parties".

The proposed revision, with no direction in the NWPA to support it, has terminated the preliminary licensing review represented by the NRC assessment process in Part 60 in favor of the preparation of a document which would merely summarize NRC/DOE agreements on a very narrow range of issues involving prospective site characterization activities. The principal justification for this proposal is drawn not from the NWPA but from the existence of the recently negotiated Procedural

Agreement and from "scheduling" considerations discussed above.

The purpose of the Procedural Agreement was not to protect the procedural rights of interested parties but to "assure that an information flow is maintained between the two agencies". The proposal erroneously suggests, on pages 21 and 22, that the rights of interested parties and the public granted under Part 60 are protected by the Agreement; a protection that merely allows "members of the public being permitted to attend as observers." (48 FR 38702, August 25, 1983).

The rights of interested parties and the public in general, especially concerning early site review and developed in formal agency rulemaking in Part 60, are not equivalent to, nor comparable to, those provided under the proposed revision which relies upon an interagency agreement developed in informal interagency discussions. Attendance at technical meetings, especially considering the requirements of time, personnel, and resources to attend the lengthy series of such meetings, cannot possibly provide an adequate or equivalent opportunity for public participation envisioned in either Part 60 or the NWPA.

ENCLOSURE D

DRAFT CONGRESSIONAL LETTER

Dear Mr. Chairman:

Enclosed for your information is a copy of a notice of proposed rulemaking to be published in the Federal Register.

On February 25, 1981 the Commission promulgated final procedures to implement its statutory authority to license and regulate the disposal of high-level radioactive wastes in geologic repositories (46 FR 13971). The enactment of the Nuclear Waste Policy Act of 1982--Public Law 97-425 (Nuclear Waste Policy Act) led the Commission to reexamine some of the procedures given in the final rule, 10 CFR Part 60 for conformity with those contained in the statute. As a result of this review, the Commission believes that certain revisions to the procedures in 10 CFR Part 60 are necessary. In addition, the Commission is taking this opportunity to clarify its procedures in light of further understanding and experience gained since the promulgation of the procedural rule. The enclosed proposed amendments make certain revisions to the procedures for site characterization and the participation of States and Indian tribes in the process of siting, licensing, and development of a geologic repository for high-level nuclear waste. The proposed amendments affect the means and timing of State and Indian tribe participation. However, the Commission believes that the proposed amendments do not significantly alter the basic principle of providing for the fullest and most complete participation of States and Indian tribes possible within the limits of the Commission's authority.

Sincerely,

Robert B. Minogue, Director
Office of Nuclear Regulatory Research

Enclosure: As stated

ENCLOSURE D

ENCLOSURE E

Regulatory Analysis

10 CFR Part 60

1. Statement of the Problem

The final rule 10 CFR Part 60, "Disposal of High-Level Radioactive Wastes in Geologic Repositories," as currently written (46 FR 13971), contains procedures for site characterization and the participation of States and Indian tribes in the siting, licensing, and development of high-level radioactive waste repositories. The Nuclear Waste Policy Act of 1982, Public Law 97-425 (Nuclear Waste Policy Act), establishes in considerable detail the procedures to be followed in the process of siting and licensing a geologic repository. The Nuclear Waste Policy Act contains specific provisions for site characterization and State and Indian tribe participation in the process of siting, licensing, and development of high-level radioactive waste repositories.

Rewvisions to the procedures given in the final rule 10 CFR Part 60 for site characterization and the participation of States and Indian tribes are being proposed. For the most part, the revisions are needed in order to reflect the provisions of the Nuclear Waste Policy Act of 1982, particularly as they relate to site characterization and the participation of States and Indian tribes in the process of siting, licensing, and development of disposal facilities. In addition, however, the Commission is taking this opportunity to clarify its procedures in the light of further understanding and experience gained since the promulgation of the procedural rule.

2. Objective

The objective of the proposed regulatory action is to make certain changes in 10 CFR Part 60 to reflect procedures for site characterization and for State and Indian tribe participation in the process of siting, licensing, and developing of high-level radioactive waste repositories established by the Nuclear Waste Policy Act, and to clarify the Commission's procedures in light of the

experience gained since the promulgation of the procedural rule 10 CFR Part 60 several years ago.

3. Alternatives

- (a) Leave the final provisions of 10 CFR Part 60 (46 FR 13971) intact.
- (b) Delete reference to State and Indian tribe participation in the process of siting, licensing, and development of a repository in 10 CFR Part 60, and publish procedures for State and Indian tribe participation as a regulatory guide.

4. Consequences

- (a) Proposed Action: Publish proposed changes in 10 CFR Part 60 to bring procedures for site characterization and State and Indian tribe participation in the siting, licensing, and development of high-level radioactive waste repositories in accordance with the Nuclear Waste Policy Act, and to clarify the procedures in light of recent experience.

The proposed revisions in 10 CFR Part 60 would bring the final rule in conformity with the Nuclear Waste Policy Act. They would clarify the procedures for site characterization and State and Indian tribe interaction with the Nuclear Regulatory Commission in light of recently enacted legislation and the experience gained over the last several years. The clarification of these procedures would benefit States and Indian tribes by giving them accurate, realistic information about opportunities available to States and Indian tribes to participate in consultations with the Nuclear Regulatory Commission. This would in turn make the process of siting, licensing, and development of high-level radioactive waste geologic repositories more efficient.

The most effective way of promulgating the revised procedures would be as revisions to 10 CFR Part 60. The promulgation of the revised procedures in this format would accomplish the objective with no unnecessary delay in making the revisions public.

(b) Alternative 1: Leave the provisions of the final rule, 10 CFR Part 60, intact.

This alternative would be inadequate because it would result in inconsistencies between the final rule, 10 CFR Part 60 and the Nuclear Waste Policy Act. These inconsistencies would leave uncertain the opportunities for participation of States and Indian tribes in the NRC activities related to siting, licensing, and development of a high-level radioactive waste geologic repository, and could lead to costly and time-consuming inefficiencies in the process.

The staff also considered a variation of this alternative where only minor changes would be made to conform terminology in 10 CFR Part 60 to the Waste Act, as an administrative rulemaking, without opportunity for public comment. This variation would result in the same uncertainties and inefficiencies in the licensing process.

(c) Alternative 2: Delete reference to State and Indian tribe participation in 10 CFR Part 60 and publish procedures for State and Indian tribe participation as a regulatory guide.

If this alternative were adopted, participation of States and Indian tribes would not be governed by the regulations of 10 CFR Part 60. Publishing procedures for State and Indian tribe participation as a regulatory guide would give only suggested guidance. States and Indian tribes have indicated strong preference for formal procedures. The regulatory guide approach would not be suitable for this reason.

5. Decision Rationale

The NRC staff has evaluated the proposed action and two alternative courses of action. The procedures for site characterization and State and Indian tribe participation in the siting, licensing, and development of high-level radioactive waste geologic repositories must be revised to bring them in accordance with the Nuclear Waste Policy Act, and to clarify the procedures in light of recent experience. Revising the procedures for State and Indian tribe participation by means of revising the final rule, 10 CFR Part 60, is the most effective method of accomplishing this.

ENCLOSURE F

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 National 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 evaluation.

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.


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

Date: 10/27/83


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

Date: 6/17/83

ENCLOSURE G

**PART-60 - DISPOSAL OF HIGH-LEVEL RADIOACTIVE
WASTES IN GEOLOGIC REPOSITORIES**

§ 60.2 Definitions

As used in this part:

(a) "Affected Indian tribe" means an affected Indian tribe as defined in the Nuclear Waste Policy Act of 1982.*

[{1}—"Indian-Tribe"—means—an-Indian-tribe-as-defined-in-the-Indian-Self-Determination-and-Education-Assistance-Act—{Public-Law-{93-638}r}]

[{q}—"Tribal-organization"—means—a-Tribal-organization-as-defined-in-the-Indian-Self-Determination-and-Education-Assistance-Act—{Public-Law 93-638}r]

Subpart B - Licenses

Preapplication Review

[§-60-10] 60.15 Site characterization.

(a) Prior to submittal of an application for a license to be issued under this part the DOE shall conduct a program of site characterization with respect to the site to be described in such application.

(b) Unless the Commission determines with respect to the site described in the application that it is not necessary, site characterization shall include a program of in situ exploration and testing at the depths that wastes would be emplaced.

(c) As provided in § 51.40 of this chapter, DOE is also required to conduct a program of site characterization, including in situ testing at depth, with respect to alternative sites.

*Comparative text - Additions to existing regulations are underlined and deletions are dashed through and enclosed in brackets.

[§-60-31--Site-characterization-report]

{a}--As-early-as-possible-after-commencement-of-planning-for-a-particular-geologic-repository-operations-area,-and-prior-to-site-characterization,-DOE-shall-submit-to-the-Director-a-Site-Characterization-Report.--The-report-shall-include-{1}-A-description-of-the-site-to-be-characterized;--{2}-the-criteria-used-to-arrive-at-the-candidate-area;--{3}-the-method-by-which-the-site-was-selected-for-site-characterization;--{4}-identification-and-location-of-alternative-media-and-sites-at-which-DOE-intends-to-conduct-site-characterization-and-for-which-DOE-anticipates-submitting-subsequent-Site-Characterization-Reports;--{5}-a-description-of-the-decision-process-by-which-the-site-was-selected-for-characterization,-including-the-means-used-to-obtain-public,-Indian-tribal-and-State-views-during-selection;--{6}-a-description-of-the-site-characterization-program-including+--{i}-The-extent-of-planned-excavation-and-plans-for-in-situ-testing;--{ii}-a-conceptual-design-of-a-geologic-repository-operations-area-appropriate-to-the-named-site-in-sufficient-detail-to-allow-assessment-of-the-site-characterization-program,-with-respect-to-investigation-activities-which-address-the-ability-of-the-site-to-host-a-geologic-repository-and-isolate-radioactive-waste,-or-which-may-affect-such-ability;--{iii}-provisions-to-control-any-adverse,-safety-related-effects-from-site-characterization,-including-appropriate-quality-programs;--{7}-a-description-of-the-quality-assurance-program-to-be-applied-to-data-collection;--{8}-any-issues-related-to-site-selection,-alternative-candidate-areas,-or-other-sites,-or-design-of-the-geologic-repository-operations-area-which-the-DOE-wishes-the-Commission-to-review.--Also-included-shall-be-a-description-of-the-research-and-development-activities-being-conducted-by-DOE-which-deal-with-the-waste-form-and-packing-which-may-be-considered-appropriate-for-the-site-to-be-characterized,-including-research-planned-or-under-way-to-evaluate-the-performance-of-such-waste-forms-and-packing.

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(b)--The-Director-shall-cause-to-be-published-in-the-Federal-Register a-notice-that-the-information-submitted-under-paragraph-(a)-of-this section-has-been-received-and-that-a-staff-review-of-that-information has-begun--The-notice-shall-identify-the-site-selected-for-site-characterization-and-alternate-areas-being-considered-by-DOE-and-shall-advise that-consultation-may-be-requested-by-state-and-local-governments-and Tribal-organizations-in-accordance-with-Subpart-6-of-this-part.

(c)--The-Director-shall-make-available-a-copy-of-the-above information-at-the-Public-Document-Room--The-Director-also-shall-transmit-copies-and-the-published-notice-of-receipt-thereof-to-the-Governor and-legislature-of-the-State-and-to-the-chief-executive-of-the-municipality-in-which-a-site-to-be-characterized-is-located-(or-if-it-is-not located-within-a-municipality,-then-to-the-chief-executive-of-the county,-or-to-the-Tribal-organization-if-it-is-to-be-located-within-an Indian-reservation)-and-to-the-Governors-of-any-contiguous-States.

(d)--The-Director-shall-prepare-a-draft-site-characterization analysis-which-shall-discuss-the-items-cited-in-paragraph-(a)-of-this section--The-Director-shall-publish-a-notice-of-availability-of-the draft-site-characterization-analysis-and-a-request-for-comment-in-the Federal-Register--Copies-shall-be-made-available-at-the-Public-Document Room--The-Director-shall-also-transmit-copies-to-the-Governor-and legislature-of-the-State-and-the-chief-executive-of-the-municipality-in which-a-site-to-be-characterized-is-located-(or-if-it-is-not-located within-a-municipality,-then-to-the-chief-executive-of-the-county,-or-to the-Tribal-organization-if-it-is-to-be-located-within-an-Indian reservation)-and-to-the-Governors-of-any-contiguous-States.

(e)--A-reasonable-period,-not-less-than-90-days,-shall-be-allowed for-comment-on-the-draft-site-characterization-analysis--The-Director shall-then-prepare-a-final-site-characterization-analysis--The-Director shall-then-prepare-a-final-site-characterization-analysis-which-shall take-into-account-comments-received-and-any-additional-information acquired-during-the-comment-period--Included-in-the-final-site characterization-analysis-shall-be-either-an-opinion-by-the-Director that-he-has-no-objection-to-the-DOE's-site-characterization-program,-if such-an-opinion-is-appropriate,-or-specific-objections-of-the-Director

to-DOE's-proceeding-with-characterization-of-the-named-site,-In-addition,
the-Director-may-make-specific-recommendations-to-DOE-on-the-matters
pertinent-to-this-section.--A-copy-of-the-final-site-characterization
analysis-and-the-Director's-opinion-will-be-transmitted-to-DOE.

{f})--Neither-issuance-of-a-final-site-characterization-analysis-nor
the-opinion-by-the-Director-shall-constitute-a-commitment-to-issue-any
authorization-or-license-or-in-any-way-affect-the-authority-of-the
Commission,-the-Accident-Safety-and-Licensing-Appeal-Board,-Accident-Safety
and-Licensing-Boards,-other-presiding-officers,-or-the-Director,-in-any
proceeding-under-Subpart-G-of-Part-2-of-this-chapter.--If-DOE-prepares
an-Environmental-Impact-Statement-with-respect-to-site-characterization
activities-proposed-for-a-particular-site,-it-should-consider-NRG's-site
characterization-analyses-before-publishing-its-final-Environmental
Impact-Statement-with-respect-to-site-characterization-activities-proposed
for-that-particular-site.

{g})--During-site-characterization,-DOE-shall-inform-the-Director-by
semiannual-report-and-by-other-reports-on-any-topic-related-to-site
characterization-if-requested-by-the-Director,-of-the-progress-of-the
site-characterization-and-waste-form-and-packaging-research-and-develop-
ment.--The-semiannual-reports-should-include-the-results-of-site-charac-
terization-studies,-the-identification-of-new-issues,-plans-for-additional
studies-to-resolve-new-issues,-elimination-of-planned-studies-no-longer
necessary,-identification-of-decision-points-reached-and-modification-to
schedules-were-appropriate.--Also-reported-should-be-the-DOE's-progress
in-developing-the-design-of-a-geologicrepository-operations-area-appre-
priate-for-the-site-being-characterized,-noting-when-key-design-parameters
or-features-which-depend-upon-the-results-of-site-characterization-will
be-established.--During-this-time,-NRG-staff-shall-be-permitted-to-visit
and-inspect-the-site-and-observe-excavations,-borings,-and-in-situ-tests
as-they-are-done.

{h})--The-Director-may-comment-at-any-time-in-writing-to-DOE,-expressing
current-views-on-any-aspect-of-site-characterization.--Comments-received
from-States-in-accordance-with-K-60,61-shall-be-considered-by-the-Director
in-formulating-his-views.--All-correspondence-between-DOE-and-the-NRG

~~including the reports cited in paragraph (g) shall be placed in the Public Document Record.~~

{i)--The activities described in paragraphs (a) through (h) above constitute informal conference between a prospective applicant [and the staff, as described in K-2101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as amended.]

* * * *

§ 60.16 Site characterization plan required.

Before proceeding to sink shafts at any area which has been approved by the President for site characterization, DOE shall submit to the Director, for review and comment, a site characterization plan for such area.

§ 60.17 Contents of site characterization plan.

The site characterization plan shall contain --

(a) A general plan for site characterization activities to be conducted at the area to be characterized, which general plan must include --

(1) A description of such area, including information on quality assurance programs that have been applied to the collection, recording, and retention of information used in preparing such description.

(2) A description of such site characterization activities, including the following --

(i) The extent of planned excavations;

(ii) Plans for any onsite testing with radioactive or nonradioactive material;

(iii) Plans for any investigation activities that may affect the capability of such area to isolate high-level radioactive waste;

(iv) Plans to control any adverse impacts from such site characterization activities that are important to safety or that are important to waste isolation; and

(v) Plans to apply quality assurance to data collection, recording, and retention.

- (3) Plans for the decontamination and decommissioning of such area, and for the mitigation of any significant adverse environmental impacts caused by site characterization activities, if such area is determined unsuitable for application for a construction authorization for a geologic repository operations area;
- (4) Criteria, developed pursuant to section 112(a) of the Nuclear Waste Policy Act of 1982 (or in the case of a geologic repository that is not subject to the Waste Policy Act, such other siting criteria as may have been used by DOE), to be used to determine the suitability of such area for the location of a geologic repository; and
- (5) Any other information which the Commission, by rule or order, requires.
- (b) A description of the possible waste form or waste package for the high-level radioactive waste to be emplaced in such geologic repository, a description (to the extent practicable) of the relationship between such waste form or waste package and the host rock at such area, and a description of the activities being conducted by DOE with respect to such possible waste form or waste package or their relationship; and
- (c) A conceptual design for the geologic repository operations area that takes into account likely site-specific requirements.

§ 60.18 Review of site characterization activities.*

(a) The Director shall cause to be published in the Federal Register a notice that a site characterization plan has been received from DOE and that a staff review of such plan has begun. The notice must identify the area to be characterized and the NRC staff members to be consulted for further information.

(b) The Director shall make a copy of the site characterization plan available at the Public Document Room. The Director shall also transmit copies of the published notice of receipt to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe. In addition, the Director shall make NRC staff available to consult with States and affected Indian tribes as provided in Subpart C of this part.

(c) The Director shall review the site characterization plan and prepare a site characterization analysis with respect to such plan. In the preparation of such site characterization analysis, the Director may invite and consider the views of interested persons on DOE's site characterization plan and may review and consider comments made in connection with public hearings held by DOE.

(d) The Director shall provide to DOE the site characterization analysis together with such additional comments as may be warranted. These comments must include either a statement that the Director has no objection to the DOE's site characterization program, if such a statement is appropriate, or specific objections with respect to DOE's program for characterization of the area concerned. In addition, the Director may make specific recommendations pertinent to DOE's site characterization program.

*In addition to the review of site characterization activities specified in this section, the Commission contemplates an ongoing review of other information on site investigation and site characterization, in order to allow early identification of potential licensing issues for timely resolution. This activity will include, for example, a review of the environmental assessments prepared by DOE at the time of site nomination. A procedural agreement covering NRC-DOE interface during site investigation and site characterization has been published in the Federal Register. 48 FR 38701, August 25, 1983.

(e) If DOE's planned site characterization activities include onsite testing with radioactive material, the Director's comments shall include a determination, if appropriate, that the Commission concurs that the proposed use of such radioactive material is necessary to provide data for the preparation of the environmental reports required by law and for an application to be submitted under § 60.22 of this part.

(f) The Director shall publish in the Federal Register a notice of availability of the site characterization analysis and a request for public comment. A reasonable period, not less than 90 days, shall be allowed for comment. Copies of the site characterization analysis and of the comments received shall be made available at the Public Document Room.

(g) During the conduct of site characterization activities, DOE shall report not less than once every six months to the Commission on the nature and extent of such activities and the information that has been developed and on the progress of waste form and waste package research and development. The semiannual reports must include the results of site characterization studies, the identification of new issues, plans for additional studies to resolve new issues, elimination of planned studies no longer necessary, identification of decision points reached and modifications to schedules where appropriate. DOE shall also report its progress in developing the design of a geologic repository operations area appropriate for the area being characterized; noting when key design parameters or features which depend upon the results of site characterization will be established. Other topics related to site characterization must also be covered if requested by the Director.

(h) During the conduct of site characterization activities, NRC staff shall be permitted to visit and inspect the locations at which such activities are carried out and to observe excavations, borings, and in situ tests as they are done.

(i) The Director may comment at any time in writing to DOE, expressing current views on any aspect of site characterization. In particular, such comments shall be made whenever the Director, upon review of comments invited on the site characterization analysis or

upon review of DOE's semiannual reports, determines that there are substantial new grounds for making recommendations or stating objections to DOE's site characterization program.

(j) The Director shall transmit copies of the site characterization analysis and all comments to DOE made by him under this section to the Governor and legislature of the State in which the area to be characterized is located and to the governing body of any affected Indian tribe. When transmitting the site characterization analysis under this paragraph, the Director shall invite the addresses to review and comment thereon.

(k) All correspondence between DOE and the NRC under this section, including the reports described in paragraph (g), must be placed in the Public Document Room.

(l) The activities described in paragraphs (a) through (k) above constitute informal conference between a prospective applicant and the staff, as described in § 2.101(a)(1) of this chapter, and are not part of a proceeding under the Atomic Energy Act of 1954, as amended.

Accordingly, neither the issuance of a site characterization analysis nor any other comments of the Director made under this section constitute a commitment to issue any authorization or license or in any way affect the authority of the Commission, the Atomic Safety and Licensing Appeal Board, Atomic Safety and Licensing Boards, other presiding officers, or the Director, in any such proceeding

Subpart C--Participation by State Governments and Indian Tribes

§ 60.61 Provision of information.

(a) The Director shall provide to the Governor and legislature of any State in which a geologic repository operations area is or may be located, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made by the Commission with respect to the site characterization, siting, development, design, licensing, construction, operation, regulation, permanent closure, or decontamination and dismantlement of surface facilities, of such geologic repository operations area.

(b) For purposes of this section, a geologic repository operations area shall be considered to be one which "may be located" in a State if the location thereof in such State has been described in a site characterization proposal submitted to the Commission under this part.

(c) Notwithstanding paragraph (a), the Director is not required to distribute any document to any entity if, with respect to such document, that entity or its counsel is included on a service list prepared pursuant to Part 2 of this chapter.

(d) Copies of all communications by the Director under this section shall be placed in the Public Document Room, and copies thereof shall be furnished to DOE.

§ 60.61--Site-review.

{a)--Upon-publication-in-the-Federal-Register-of-a-notice-that-the DOE-has-selected-a-site-for-site-characterization,-in-accordance-with §-60.11{b},-and-upon-the-request-of-a-State,-the-Director-shall-make available-NRC-staff-to-consult-with-representatives-of-State,-Indian-tribal and-local-governments-to-keep-them-informed-of-the-Director's-view-on-the progress-of-site-characterization-and-to-notify-them-of-any-subsequent meetings-or-further-consultations-with-the-DOE.]

§ 60.62 Site review.

(a) Whenever an area has been approved by the President for site characterization, and upon request of a State or an affected Indian tribe, the Director shall make NRC staff available to consult with representatives of such States and tribes.

(b) Requests for consultation shall be made in writing to the Director.

[{c)--The-Director-also-shall-respond-to-written-questions-or-comments from-the-State,-Indian-tribal-and-local-governments-as-appropriate,-or-the information-submitted-by-the-DOE-in-accordance-with-§-60.11-of-this-part. Copies-of-such-questions-or-comments-and-their-responses-shall-be-made available-in-the-Public-Document-Room-and-shall-be-transmitted-to-the-DOE.]

(c) Consultation under this section may include:

(1) Keeping the parties informed of the Director's views on the progress of site characterization.

(2) Review of applicable NRC regulations, licensing procedures, schedules, and opportunities for state participation in the Commission's regulatory activities.

(3) Cooperation in development of proposals for State participation in license reviews.

[§-60-62--Filing-of-proposals-for-State-participation

{a}--Consultation-under-§-60-61-may-include,-among-other-things,-a review-of-applicable-NRC-regulations,-licensing-procedures,-potential schedules,-and-the-type-and-scope-of-State-activities-in-the-license-review permitted-by-law---In-addition,-staff-shall-be-made-available-to-cooperate with-the-State-in-developing-proposals-for-participation-by-the-State.

{b}--States-potentially-affected-by-siting-of-a-geologic-repository operations-area-at-a-site-that-has-been-selected-for-characterization-may submit-to-the-Director-a-proposal-for-State-participation-in-the-review-of the-Site-Characterization-Report-and/or-license-application--A-State's proposal-to-participate-may-be-submitted-at-any-time-prior-to-decketing-of an-application-or-up-to-120-days-thereafter.

{c}--Proposals-for-participation-in-the-review-shall-be-signed-by-the Governor-of-the-State-submitting-the-proposal-and-shall-at-a-minimum-contain the-following-information

{1}--A-general-description-of-how-the-state-wishes-to-participate-in the-review,-specifically,-identifying-those-issues-which-it-wishes-to review.

{2}--A-description-of-material-and-information-which-the-State plans-to-submit-to-the-NRC-staff-for-consideration-in-the-review--A tentative-schedule-referencing-steps-in-the-review-and-calendar-dates for-planned-submittals-should-be-included.

{3}--A-description-including-funding-estimates-of-any-work-that-the State-proposes-to-perform-for-the-Commission,-under-contract,-in-support of-the-review.

{4}--A-description-of-State-plans-to-facilitate-local-government-and-citizen-participation.

{5}--A-preliminary-estimate-of-the-types-and-extent-of-impacts-which-the-State-expects-should-a-geologic-repository-be-located-at-the-site-in-question.

- {d}--If-the-State-desires-educational-or-information-services-(seminars,-public-meetings)-or-other-actions-on-the-part-of-NRG,-such-as-establishing-additional-public-document-rooms-or-employment-or-exchange-of-State-personnel-under-the-Intergovernmental-Personnel-Act,-these-shall-be-included-with-the-proposal.

§ 60.63--Approval-of-proposals.

-{a}--The-Director-shall-arrange-for-a-meeting-between-the-representatives-of-the-State-and-the-NRG-staff-to-discuss-any-proposal-submitted-under-§-60.62{b},-with-a-view-to-identifying-any-modifications-that-may-contribute-to-the-effective-participation-by-the-State.

{b}--Subject-to-the-availability-of-funds,-the-Director-shall-approve-all-or-any-part-of-a-proposal,-as-it-may-be-modified-through-the-meeting-described-above,-if-it-is-determined-that-

{1}--The-proposed-activities-are-suitable-in-light-of-the-type-and-magnitude-of-impacts-which-the-State-may-bear,-and

{2}--The-proposed-activities-{i}-will-enhance-communications-between-NRG-and-the-State,-{ii}-will-contribute-productively-to-the-license-review,-and-{iii}-are-authorized-by-law.

{c}--The-decision-of-the-Director-shall-be-transmitted-in-writing-to-the-Governor-of-the-originating-State.--A-copy-of-the-decision-shall-be-made-available-at-the-Public-Document-Room.--If-all-or-any-part-of-a-proposal-is-rejected,-the-decision-shall-state-the-reason-for-the-rejection.

{d}--A-copy-of-all-proposals-received-shall-be-made-available-at-the-Public-Document-Room.]

§ 60.63 Participation in license reviews.

(a) State and local governments and affected Indian tribes may participate in license reviews as provided in Subpart G of Part 2 of this chapter.

(b) In addition, whenever an area has been approved by the President for site characterization, a State or an affected Indian tribe may submit to the Director a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The proposal may be submitted at any time and shall contain a description and schedule of how the State or affected Indian tribe wishes to participate in the review, of what services or activities the State or affected Indian tribe wishes NRC to carry out, and how the services or activities proposed to be carried out by NRC would contribute to such participation. The proposal may include educational or information services (seminars, public meetings) or other actions on the part of NRC, such as establishing additional public document rooms or employment or exchange of State personnel under the Intergovernmental Personnel Act.

(c) The Director shall arrange for a meeting between the representatives of the State or affected Indian tribe and the NRC staff to discuss any proposal submitted under paragraph (b) of this section, with a view identifying any modifications that may contribute to the effective participation by such State or tribe.

(d) Subject to the availability of funds, the Director shall approve all or any part of a proposal, as it may be modified through the meeting described above, if it is determined that:

(1) The proposed activities are suitable in light of the type and magnitude of impacts which the State or affected Indian tribe may bear;

(2) The proposed activities (i) will enhance communications between NRC and the State or affected Indian tribe, (ii) will make a productive and timely contribution to the license review, and (iii) are authorized by law.

(e) The Director will advise the State or affected Indian tribe whether its proposal has been accepted or denied, and if all or any part of proposal is denied, the Director shall state the reason for the denial.

(f) Proposals submitted under this section, and response thereto, shall be made available at the Public Document Room.

[§-60.64--Participation-by-Indian-tribes-

{a)--Any-Indian-tribe-which-is-potentially-affected-by-siting-of-a-geologic-repository-operations-area-at-a-site-that-has-been-selected-for-characterization-may-

{1)--Request-consultation-as-provided-with-respect-to-States-under-§-60.61,

{2)--Submit-proposals-for-participation-as-provided-with-respect-to-States-under-§-60.62,-except-that-such-proposals-shall-be-signed-by-the-Tribal-organization,

{b)--The-Director-shall-respond-to-such-requests-or-proposals-in-the-manner-provided-in-this-subpart,-except-that-decisions-under-§-60.63-shall-be-transmitted-in-writing-to-the-chief-executive-(or-other-specifically-authorized-representative)-of-the-Tribal-organization,

{c)--Any-request-or-proposal-under-this-section-shall-be-accompanied-by-such-documentation-as-may-be-needed-to-determine-the-eligibility-of-the-Indian-tribe-or-the-specific-authority-of-its-representatives.]

§ 60.64 Notice to States.

If the Governor and legislature of a State have jointly designated on their behalf a single person or entity to receive notice and information from the Commission under this part, the Commission will provide such notice and information to the jointly designated person or entity instead of the Governor and legislature separately.

[§-60.65--Coordination-

The-Director-may-take-into-account-the-desirability-of-avoiding-duplication-of-effort-in-taking-action-on-multiple-proposals-submitted-pursuant-to-the-provisions-of-this-Subpart-to-the-extent-this-can-be-accomplished-without-substantial-prejudice-to-the-parties-concerned.]