

File



November 8, 1984

SECY-84-263A

RULEMAKING ISSUE (Information)

For: The Commissioners

From: William J. Dircks
Executive Director of Operations

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

Purpose: To transmit recently received comments on the subject amendments
from the States of Minnesota, Nevada, and Texas, and the Environmental
Policy Institute

Discussion: Proposed amendments to 10 CFR Part 60 initiated in response to the
Nuclear Waste Policy Act dealing with site characterization and the
participation of States and Indian tribes, dated June 26, 1984, were
submitted to the Commission (SECY-84-263) for approval to publish in
the Federal Register for comment. Included in that Commission paper
package is information on comments previously received from States and
public interest groups.

As noted in SECY-84-263, the Commission paper has been placed in the
public document room. It was also discussed at a meeting of the
National Governors' Association due to the high interest of States and
affected Indian tribes. Additional comments on the proposed
amendments have been received from the States of Minnesota, Nevada,
and Texas, and the Environmental Policy Institute (Enclosures A thru
D). All of the significant comments in these letters concern four
issues; 1) NRC review of DOE's site screening and selection process,
2) the decoupling of Part 60 and part 51 revisions which are needed to
reflect the Nuclear Waste Policy Act, 3) the elimination of the draft
site characterization analysis, and 4) concern about the basis for
standing of States and tribes in a licensing hearing. All but the
last of these issues are discussed in SECY 84-263. However, the staff
believes the recent comments on issues 1), 2), and 3) above warrant
additional analysis and discussion (Enclosure E). Analysis of all of
the issues is contained in Enclosure E. As a result of this analysis,
the staff has concluded that these additional comments do not provide
any new information which would lead it to change its recommendation
to the Commission contained in SECY-84-263.

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XA

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The comment letters and the staff analysis/discussion are hereby provided to the Commission for use in its consideration of the proposed amendments. Other, less significant comments are also contained in the letters. The staff proposes to address these along with comments received during the public comment period.

William J. Dircks,
Executive Director of Operations

Enclosures:

- A. Ltr from Minnesota Environmental Quality Board dtd. 8/1/84
- B. Ltr from Nevada Nuclear Waste Project Office, Office of the Governor dtd. 8/17/84
- C. Ltr. from Texas, Office of the Governor dtd. 9/19/84
- D. Ltr. from Environmental Policy Institute dtd. 8/3/84
- E. Staff Analysis of Comments

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ENCLOSURE A

STATE OF MINNESOTA

COMMENTS ON THE PROPOSED AMENDMENTS TO 10 C.F.R. PART 60

The State of Minnesota has reviewed a draft, dated June 26, 1984, of amendments to 10 C.F.R. Part 60, "Disposal of High-Level Radioactive Waste in Geologic Repositories," which has been transmitted to the Commissioners of the U.S. Nuclear Regulatory Commission (hereinafter "NRC") for their review. These amendments were a part of a memorandum from William J. Dircks, Executive Director for Operations, to the Commissioners (hereinafter "Staff Memo"). Minnesota wishes to comment on aspects of the proposed amendments relating to the participation of States and affected Indian tribes in site characterization analysis and licensing reviews.

- 1) Minnesota strongly disagrees with the NRC staff regarding the contents of the site characterization plan. Because the guidelines lack any provisions requiring DOE to set forth its method for selection of sites for characterization or describe its decision process, we believe that the NRC should request that such information be provided in the site characterization plan.

Requiring such information by the NRC does not conflict with NWA or duplicate information already provided by DOE. Page 2 of the June 26 Staff Memo notes that:

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 60 in the site characterization report.

However, it fails to note that the site selection information pertains only to the selection of the five nominated sites, and not to the selection of the three candidate sites; it is not duplicative of information previously required.

Enclosure A offers justification of the staff position by relying on a narrow and specific interpretation of NWA (page 10) and the NRC's own statutory responsibilities (page 13). There is no provision precluding the NRC from considering site selection information; instead, Section 13(b)(1)(A)(v) of NWA authorizes the NRC to request "Any other information required" for its review of a general plan for site characterization. Because the site selection information for the three candidate sites is not available elsewhere, and because the NRC does have the authority to request such information, we believe it should be included in the site characterization plan.

We are troubled by the reluctance of DOE to provide the method and decision process used in the selection of the three candidate sites and the reluctance of the NRC staff to review and comment on such information. While we would like to believe that the selection would be based on technical considerations and the desire to produce three viable alternatives, this reluctance leads us to the conclusion that other considerations will enter into

the decision. This should not be a concern of the States alone, but also should be shared by the NRC and the staff. The willingness to look at the quality of the data available (page 13) but not its application, compartmentalizes staff review activities to an unreasonable and unnecessary extent. Taking this "blind" position is also inconsistent with the NRC's past efforts to develop a participatory role in the process as early as possible.

It is difficult to understand why the staff finds it inappropriate to comment on site selection information, particularly if sites are selected that will raise potential licensing issues. There is no way to avoid the politically sensitive aspects of site selection; they are present at each stage of the process. Rather than be a party to procedures that promote an aura of secrecy, the Commission, in the interest of ensuring that sites selected for characterization are the best among the five nominated, should be pursuing a course more characteristic of an independent regulator than a DOE facilitator.

We wish we could share the staff's confidence that these DOE decisions will lead to a licensible site; however, the general nature of the guidelines and DOE's position on past issues, such as the preliminary determination of suitability, have not been reassuring. We hope the NRC will retain the methodology and decision process in the contents required for the site characterization plan, thereby providing other parties, if not the NRC, with the opportunity to review and comment on those issues.

- 2) Minnesota favors the current language in 10 CFR 60.11 that provides for public comment on a draft site characterization analysis prepared by NRC staff. The staff, in Appendix A, page 14-17, assumes that ongoing consultation and contact between the NRC, DOE, and the states and affected parties eliminates the need for any formal public interaction with the NRC. The staff, however, should not assume that the States or other interested parties will have the resources to participate in a manner similar to that of NRC and DOE. This was apparent when similar assumptions were made about the DOE/NRC staff concurrence meetings. Even if States and interested parties are to participate at that level, they lack some of the technical expertise needed to carefully and fully follow and understand the progress of this program in all its complexity.

The States and affected parties would find it extremely helpful to have a document, prepared by individuals with that technical expertise, that analyzes and identifies key issues associated with various aspects of the site characterization program. Many of the States and parties involved would depend on the NRC to provide this analysis before they submitted their comments to DOE. This is a critical point in the repository siting program and every effort should be made by NRC staff to enhance, rather than restrict, public comment and participation.

The desire to maintain an on-going, DOE/NRC interagency process is commendable and should be encouraged; however it should not be considered a substitute for formal public review of the site characterization analysis. If, as indicated on page 16 of Appendix A, scheduling mandates are to be emphasized, then we suggest that this interaction be depended on to reduce the amount of time needed by staff to prepare the analysis and compensate for the time required for public review of that analysis.

- 3) We note that the current rules (10 CFR 60.11(c)) require that local governments and contiguous States, as well as affected States and Indian tribes, be notified at key decision points. The proposed amendments (10 CFR 60.18(b) and (j)), while still retaining some of the notification provisions, no longer require NRC notification of local governments and contiguous states.

We request that NRC reconsider inclusion of these entities. County and/or municipal governments are the most directly affected and should receive notice of receipt. Potential repository sites may be located near State boundaries; in such cases, adjoining states will have a strong interest in site characterization activities and related matters that are to be addressed in the site characterization plan. (See Staff Memo, page 27.) The local governments and contiguous States wording should be added to the list of those notified in proposed 10 CFR 60.18(b) and (j).

- 4) The proposed amendments, if adopted, would change 10 CFR 60.63(a) to read as follows:

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

(Emphasis added.) Subpart 6 of 10 CFR 2 is entitled "Rules of General Application." The scope of those rules is stated in 10 CFR 2.700:

The general rules in this subpart govern procedure in all adjudications initiated by the issuance of an order to show cause, an order pursuant to 2.205(e) [a hearing on a notice of violation], a notice of hearing, a notice of proposed action issued pursuant to 2.105 [including notices of proposed licensing actions for which no hearing is required] or a notice pursuant to 2.102(d)(3) [notice concerning the construction or operating permit for a utilization or production facility].

(Emphasis added.) Page 18 of the Staff Memo states: "Affected States and Indian tribes will be entitled to participate in the licensing proceedings." (Emphasis added.) However, the proposed rule amendments do not create such entitlement. The proposed amendments provide that State and local governments and Indian tribes "may participate" (as opposed to "shall be allowed to participate") in licensing reviews. Since that portion of the sentence does not create an entitlement to participate in hearings, one must look to the phrase "as provided in 10 C.F.R. Part 2" to determine whether those entities will be allowed to participate.

Under Subpart G of 10 CFR 2, States, local governments, and Indian tribes do not have an absolute right to participation in adjudications conducted by the NRC. Pursuant to 10 CFR 2.714, any petitioner must be affirmatively admitted as a party by the Atomic Safety and Licensing Board before that petitioner is entitled to participate.

The fact that this proposed rule is nothing more than a reminder to States, local governments, and affected Indian tribes of the existence of 10 CFR 2 is confirmed by the following statement at page 27 of the Staff Memo:

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.

The proposed amendment 10 CFR 60.63(d)(2) also adds a qualifying term that could be used to further limit state participation in the review of a site characterization plan and/or a license application. The current wording of 10 CFR 60.63(b)(2) lacks the word "timely" in its description of the type of state contribution that would be looked upon favorably by the NRC. While we recognize the need to conduct the proposed activities in a manner that does not unduly delay license reviews, we also recognize that the States do not always have the expertise and personnel immediately available to address the complex issues that will be considered by the Commission.

Based on our experience to date with the repository program, as well as our expectations regarding the pressures exerted on decisionmakers as the program progresses, we are concerned that the word "timely" will become the focal point of this qualification, despite the benefits that might accompany state participation. The key word is "productive" and, if a state can make a productive contribution to the license review, the NRC should be willing to accommodate reasonable needs of the states in providing that contribution.

Minnesota believes that the proposed rule amendment should be changed to provide an absolute right of participation in NRC hearings on licensing a high-level radioactive waste repository to those State, local and tribal governments which are affected by the proposed repository. The decision being made in such a proceeding will profoundly affect those entities. The possibility that these entities could be excluded from participation should be remedied.

Minnesota's position on this matter is prompted not only by the importance of the repository licensing matter, but also by the recent efforts of the NRC staff to "reform" the NRC's rules of practice so that States, local governments, and affected Indian tribes could be prevented from effectively participating in NRC licensing hearings of any kind. The staff's suggestions for "improving" the licensing process were published on April 12, 1984 (49 Fed. Reg. 14698). In a letter dated May 25, 1984, Minnesota strongly objected to those suggestions. A copy of that letter is attached. Minnesota continues to believe that those suggestions would adversely affect all future intervenors and would reduce the public's confidence in the NRC as a licensing body.

Minnesota urges the NRC to change the proposed language of 10 CFR 60.63 to read as follows:

Upon request, the government of any State, county, municipality, or Indian tribe affected by the location of the proposed repository shall be granted party status in any hearing conducted by the Commission on the license application held pursuant to Subpart G of Part 2 of this chapter.



STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

ST. PAUL 55155

May 25, 1984

ADDRESS REPLY TO
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ROSEVILLE, MN 55113
TELEPHONE (612) 296-7342

Secretary
U. S. Nuclear Regulatory Commission
Washington D.C. 20555

Re: Request for public comments on suggestions for procedural changes in nuclear power plant licensing process, 40 Fed. Reg. 14698 (April 12, 1984)

Dear Sir:

On April 12, 1984, the Commission published a request for public comments on suggestions for procedural changes in the nuclear power plant licensing process. (49 Fed. Reg. 14698.)

The State of Minnesota, by its Attorney General and its Minnesota Pollution Control Agency, (hereinafter "Minnesota") has reviewed the suggestions published in the Federal Register and wishes to comment on five aspects of the suggestions, as discussed below.

1. Creation of a Screening Atomic Safety and Licensing Board. It has been suggested that 10 C.F.R. Section 2.721 be revised to authorize the establishment of one or more Screening Atomic Safety and Licensing Boards. The screening boards would rule on requests for hearing, petitions for leave to intervene, and admissibility of contentions in all initial licensing proceedings.

Minnesota supports the adoption of this suggestion. The creation of screening boards should result in more consistency and predictability with respect to the rulings made by the Boards. Under the present system, an individual Atomic Safety and Licensing Board is appointed each time a request for hearing is received, and that individual Board makes its own determinations on requests for hearing, petitions for leave to intervene, and the admissibility of contentions. Because each Board is not necessarily aware of what is being done by other Boards or what other Boards have done in the past, there is potential for conflicting rulings on similar requests, petitions, and contentions. Minnesota believes that improving consistency and predictability as to these rulings by creating screening boards would benefit all parties.

2. Applying Judicial Standards of Standing. It has been suggested that 10 C.F.R. Section 2.714 be amended so that no person would be able to initiate a hearing on a nuclear power plant or intervene in a hearing on a nuclear power plant unless that person can meet judicial standards of standing. Specifically, 10 C.F.R. Section 2.714(f) is proposed to be amended as follows:

(f) Ruling on request for hearing or petition to intervene. The Commission or the presiding officer designated to rule on the intervention petition or request for hearing shall, in ruling on the request or petition shall [sic] consider the following factors, among other things:

(1) The nature of the requestor's or petitioner's right under the Act to be made a party to the proceeding.

(2) The nature and extent of the requestor's or petitioner's property, financial, or other interest in the proceeding.

(3) The possible effect of any order which may be entered in the proceeding on the requestor's or petitioner's interest. No request for hearing or petition to intervene may be granted unless the Commission or the presiding officer designated to rule on the request or petition determines that the requestor or the petitioner meets judicial standards for standing.

Minnesota strongly objects to the suggestion because it is contrary to express provisions of the Atomic Energy Act (Act). Section 189 of the Act provides, in relevant part:

In any proceeding under this Act, for the granting, suspending, revoking, or amending of any license or construction permit, or application to transfer control, . . . the Commission shall grant a hearing upon the request of any person whose interest may be affected by the proceeding, and shall admit any such person as a party to such proceeding.

(Emphasis supplied.) Under the Act, any person "whose interest may be affected" has standing to request a hearing or to intervene in a hearing and the Commission is required by the Act to grant such a hearing request or admit any such person as a party. The suggested amendment would require a person's request

or petition to be denied if the person could not meet the more stringent test that must be met to establish judicial standards for standing.

Judicial standards for standing are discussed in the leading case of Association of Data Processing Service Organizations, Inc. v. Camp, 397 U.S. 150, 90 S.Ct. 827, 25 L.Ed.2d 184 (1970). In that case the United States Supreme Court announced a two-part test for standing. Standing exists if "the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise," and if "the interest sought to be protected by the complainant is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question." 397 U.S. at 152-153, 90 S.Ct. at 829-830.

The suggested amendment goes beyond the requirements of the Act and is thus beyond the Commission's statutory authority. Therefore the Commission cannot adopt the suggested amendment.

3. Changing the Requirements Relating to Contentions. It has been suggested that 10 C.F.R. Section 2.714 be amended to change the requirements relating to contentions. These changes, as discussed below, are significant, and Minnesota objects to these changes.

First, the suggested amendments would change the time for filing of contentions. The existing 10 C.F.R. Section 2.714(b) allows the person who requests a hearing or petitions to intervene to file his or her contentions "not later than fifteen (15) days prior to the holding of the special prehearing conference." The suggested amended 10 C.F.R. Section 2.714(g) requires the contentions and supporting information to be submitted "at the time the petition or request is filed." Second, the suggested amendments would greatly increase the burden on the person who requests a hearing or petitions to intervene to provide information supporting the contentions. The present regulation, 10 C.F.R. Section 2.714(b) only requires the "bases for each contention set forth with reasonable specificity." The suggested amended regulation 10 C.F.R. §2.714(g)(1) would require submission of the following:

(i) A brief explanation of the bases of the contention.

(ii) A concise statement of the alleged facts or expert opinion which support the contention and which at the time of the filing the requestor or petitioner intends to rely upon in proving its contentions at the hearing,

together with references to the specific sources and documents which will be relied upon to establish such facts or expert opinion.

(iii) Sufficient information (which may included information pursuant to §2.714(g)(1)(i) and (ii)) to show that a genuine dispute exists with the applicant ^{1/} on an issue of law, fact or policy. This showing must include references to the specific portions of the application (including the applicant's environmental and safety report) which the requestor or petitioner disputes and the supporting reasons for each such dispute, or, if the requestor or petitioner believes that the application fails to contain certain information on a relevant matter as required by law, the identification each such failure and the supporting reasons for the requestor's or petitioner's belief. On issues arising under NEPA, a petitioner shall file contentions based on the applicant's environmental report. The petitioner can amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement or appraisal that differ significantly from the data or conclusions in the applicant's document. Amended or new contentions based on NRC environmental documents shall be filed and ruled upon in initial licensing proceedings in accordance with paragraph (j) of this section. (Emphasis supplied.)

The suggested amendments relating to contentions create an impossible situation for intervenors. Ordinarily, in accordance with the provisions of 10 C.F.R. §2.105(d), the Commission informs the public, in the Federal Register, about a proposed license or license amendment thirty days before the due date for the filing of requests for hearing or petitions to intervene. This has, in most cases, been just barely enough time for a potential intervenor to make a decision that it is interested in filing a request for hearing or a petition to intervene and to file the request or petition. Additional time is essential to allow for the drafting of contentions. Under the suggested amendments, potential intervenors will have a maximum of thirty

^{1/} History has shown that intervenors in Commission licensing proceedings are just as likely to have a genuine dispute with the Commission staff on issues of law, fact, or policy as with the applicant. If this suggested amendment is intended to limit litigation of disputes only to those between the applicant and the intervenor, this suggested amendment is not reasonable.

days to obtain a copy of the license application and supporting information, review that information, note all problems, develop a case-in-chief, put it in writing, and submit it within the deadline.

The requirement that intervenors must submit, along with their contentions, all of the information set forth in the suggested amendments to 10 C.F.R. Section 2.714(g)(1) amounts to a requirement that intervenors have ready their case-in-chief at the time of filing the request for hearing or petition to intervene, prior to the opportunity to conduct discovery. This requirement is much too onerous at the point in the proceeding where the only decision to be made is whether a particular contention is admissible. It is more onerous than the requirements in any judicial proceeding. Minnesota recognizes that this information must eventually be developed in order to have a meaningful presentation of the issues. However, this information should not be required at such a preliminary stage.

Under the suggested amendments, the only persons who have a hope of submitting an admissible contention are those who have been privileged to have received a copy of the license amendment as the same time as the Commission staff received it, who have followed the Commission staff review and the drafting of the proposed license or license amendment, and who have been preparing their case in chief prior to the publication of notice in the Federal Register of the existence of the license application. In a state such as Minnesota, which is a non-agreement state, it is doubtful that anyone, including the State and its agencies, could submit a successful request for hearing or petition to intervene.

In Minnesota's experience, the present rule allowing contentions to be filed just prior to the special prehearing conference has allowed sufficient time to prepare meaningful contentions and the statement of bases required by the present rule has provided sufficient information to allow the Licensing Boards to rule on their admissibility. Therefore the present rule should be retained. The suggested amendments are unreasonable and should be rejected by the Commission.

4. Requiring a Demonstration of Special Need for Cross Examination. It has been suggested that 10 C.F.R. Section 3.733 and 2.743 be revised to permit cross examination only upon the request of a party filed within 10 days after service of the written testimony concerning a particular issue and limiting cross examination only to those parties who have submitted an admissible contention on the issue. A motion to cross examine

must include a detailed cross examination plan and a statement as to why written testimony could not establish the same points.

Minnesota regards this suggestion as entirely unacceptable. The major purpose of a Commission licensing hearing is to adjudicate disputed facts. Trial-type procedures are not only appropriate but essential to develop a full and complete hearing record. The right of parties to cross examine witnesses in an adversarial proceeding is a fundamental characteristic of the adversarial process arising from basic constitutional principles of due process. There would have to be an extraordinarily good reason to remove that constitutional right entirely from persons who did not happen to file a contention on a given issue. Such a good reason is not demonstrated by the discussion of this suggestion. In fact, no reason is offered by the discussion of this issue.

There are perfectly legitimate reasons why an intervenor may wish to, and should have a right to, cross examine witnesses on issues raised by another party. Many intervenors, including states, have limited resources to devote to Commission licensing proceedings. They be forced by this fact to coordinate their efforts with other intervenors and to divide up the work with respect to issue in which they have a common interest. Thus two intervenors may, to avoid duplication of effort, agree between themselves to assert different contentions but to support each other with respect to the presentation of evidence and the cross examination of adverse witnesses concerning these contentions. In addition, given the complexity of the subject matter, an intervenor may discover that it is vitally interested in an issue which it did not initially identify. The Commission has no valid reason to cut off the rights of parties to fully participate in all issues which are the subject of the hearings.

Even where the suggested amendment allows a party an opportunity to make a motion for the right to cross examine witnesses, the terms of the suggested amendment is a de facto removal of the right to cross examination. It is totally unreasonable and unrealistic to expect a party who has been served with potentially voluminous testimony and exhibits to accomplish, within ten days, the tasks of reading and digesting the material, preparing a detailed cross examination plan, and preparing and submitting a written motion to the presiding officer. No person who has ever been a party to a Commission licensing proceeding could seriously suggest that ten days would be sufficient to accomplish all of this.

The time schedule established by this suggested amendment

contains serious potential for abuse by parties with substantial financial resources. For example, an applicant who wishes to ensure that its witnesses will not be cross examined has the opportunity to present the intervenors with thousands of pages of testimony and exhibits which would be clearly beyond the capability of the intervenor to review in time to file a motion for cross examination.

Minnesota emphatically objects to the suggested amendments regarding cross examination and urges the Commission not to consider them any further.

5. Limitations on Filing Proposed Findings of Fact, Conclusions of Law, and Exceptions. It has been suggested that 10 C.F.R. Sections 2.754 and 2.762 be amended to limit the filing of proposed findings of fact, conclusions of law, and exceptions on a given issue only to those parties who raised the issue in a contention. Applicants and Commission staff, however, would not be subject to this limitation.

Minnesota strenuously objects to this suggestion, as it will not further the Commission's interest in better decision-making and it will severely limit the full participation by intervenors. As discussed above, intervenors may have a significant interest in contentions raised by other parties. There is nothing inherently unfair about a party submitting its views as to the state of the record on an issue which has been duly raised in an adversarial proceeding. The filing of proposed findings of fact and conclusions of law does no harm; on the contrary, it could be of help to the decision-makers. The filing of valid exceptions by persons other than those who put an issue in controversy is likewise no threat to sound decision-making. This suggestion is not supported by any valid rationale and should not be adopted by the Commission.

Minnesota appreciates the opportunity to comment on the suggested amendments, which, if adopted, would have a profound impact on the ability of Minnesota to participate in any future Commission licensing proceedings. In general, the suggestions are inimical to intervenors and to the public. The suggestion that these amendments would "improve" the hearing process is

ironic. The "improvement" would consist of the elimination of all hearings other than those requested by applicants.

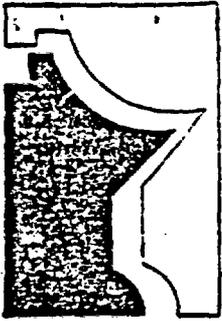
Very truly yours,

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WM Docket File

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WM Project _____

Docket No. _____

PDR _____

LPDR _____

Distribution:

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August 1, 1984

Mr. Robert Browning
Director, Division of Waste Management
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
1717 E. Street
Washington, D.C. 20555

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WM DOCKET CONTROL
CENTER

Dear Mr. Browning:

Thank you for distributing copies of the proposed licensing procedures amendments to 10 CFR 60 and associated documents. Minnesota appreciates the NRC efforts to solicit comments from the states in advance of Commission action on the draft proposed amendments.

We agree with the Commission staff that some of the licensing provisions of 10 CFR 60 require amendment following passage of the Nuclear Waste Policy Act. Like the states of Texas and Nevada, however, we are unwilling to endorse changes in the process that will limit the breadth of state participation. We are most comfortable with a process structured on formal rules rather than good intentions. Given the length of the repository programs, as well as the enormous complexities and uncertainties associated with siting and licensing a repository, the Commission should be willing to err on the side of caution, despite the possibility of some duplication and added cost.

These amendments follow the recent release of proposed revisions in the Rules of Practice for Domestic Licensing Proceedings (10 CFR 2), which Minnesota has already commented on, and compound our concern over the Commission's commitment to state participation. If these combined changes are adopted by the Commission, they will significantly restrict state involvement in matters in which states could be greatly affected.

In the case of the amendments to 10 CFR 60, the staff has proceeded to alter more than was necessary to eliminate the real conflicts between the current rules and the Nuclear Waste Policy Act. In addition, we disagree with the status the staff ascribes to the DOE/NRC Procedural Agreement, as set forth in the June 26 Staff Memo the Commissioners. We do not view the Agreement, a document that assigns to members of the public an observer role, as our guarantee of state participation. Nor do we view the Agreement as a substitute for the NRC's regulatory responsibilities.

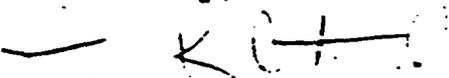
ENCLOSURE A

Mr. Robert Browing
August 1, 1984
Page Two

Our desire to maintain more than a single avenue for state participation is due, in part, to our past interaction with the NRC. This interaction has been positive because the Commission has demonstrated a willingness to listen and respond to state concerns. The desire also is based on our belief that formal, constructive state participation is beneficial. We believe that both DOE and the NRC can identify specific areas where state participation has already contributed to significant improvements in the program, and we want to ensure that this interaction continues.

With this approach guiding over review of the proposed amendments, we offer the attached comments for your consideration. Please contact us if you have any questions or if we can be of further assistance.

Sincerely,


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

TK/pb

cc: NRC Commissioners
Congressional Delegation
First and Second Repository States
Jim DuChaine, Minnesota Washington Office
Holms Brown, NGA

ENCLOSURE B

Figure



WM DOCKET CONTROL
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NUCLEAR WASTE PROJECT OFFICE ¹⁰⁸ AUG 22 AIO:59

OFFICE OF THE GOVERNOR

Capitol Complex

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August 17, 1984

WM Record File

105.2

WM Project _____

Docket No. _____

PDR /

LPDR /

Mr. Robert Browning, Director
Division of Waste Management
U. S. Nuclear Regulatory Commission
Washington, D.C. 20555

Distribution:

KEE JCN

MJR. J.

(Return to WM, 623-SS)

AF JJS
CK MK
W Kerr LB C

Dear Mr. Browning:

Thank you for providing Nevada the opportunity to comment on changes contemplated in 10 CFR Part 60, "Disposal of High-Level Radioactive Waste in Geologic Repositories".

We have the following comments to offer with regard to the proposed amendments to licensing procedures, SECY-84-263:

- 1) The suggested changes to 10 CFR Part 60 appear to unnecessarily limit NRC's NEPA responsibilities as they relate to site screening. We believe that the Commission has a broad responsibility in this regard. This responsibility requires intimate involvement in the site screening process in order to provide an adequate basis for reviewing and adopting DOE's Environmental Impact Statement later on.

The process by which DOE screens and selects a site cannot be separated from the eventual licensing process. NRC's responsibility to assure a safe and acceptable site extends logically to a review of the mechanism by which such a site was selected. If the screening and selection process is faulty, NRC's responsibility to assure safety may be impaired and its licensing decision based on less than complete information. Consequently, we would encourage the Commission to clearly affirm its role in site screening and site selection in 10 CFR Part 60.

- 2) The proposed rules governing the Site Characterization Plan should provide for the same level of information, the same process requirements, and the same level of analysis for socioeconomic, transportation, environmental, and institutional aspects as they do for the technical elements involved in site characterization. These non-technical sections of the SCP should also be updated by DOE and submitted for review by NRC and the states every six months. The director should require, as provided for in 10 CFR Part 60 and in NWPA, that DOE include these elements in the Site Characterization Plan.
- 3) We believe that NRC should promulgate all new or changed rules deemed necessary as a result of the passage of the Nuclear Waste Policy Act in one rulemaking in order to assure that a comprehensive and integrated approach is taken and that any confusion regarding NWPA and NEPA requirements is eliminated. The Commission's proposal to address NEPA issues in a separate rulemaking at some time in the future may cause unnecessary fragmentation of NRC's requirements and even its authority.
- 4) The State of Nevada suggests that the responsibilities and perogatives of the Nuclear Regulatory Commission, as they were originally expressed in 10 CFR Part 60, remain essentially unchanged by the Nuclear Waste Policy Act.

The NWPA clarified and focused the NRC role vis-a-vis the siting, characterizing, licensing, constructing, operating, closing and decommissioning of a radioactive waste repository. However, it does not appear to have been the intent of the Act to limit NRC's role as primary overseer of health and safety concerns as provided in 10 CFR Part 60 and 10 CFR Part 2.

While NRC may need to revise certain elements of existing regulations in order to more closely synchronize its role with the provisions of the NWPA, it should in no way feel obligated to reduce its influence or involvement by deferring to DOE important responsibilities such as assuring involvement of states and affected Indian tribes at key stages of the repository development process. The mere fact that the Act imposed upon DOE the requirement to so involve states and tribes does not, in our view, preclude NRC from a separate responsibility for providing for state/tribe involvement via its own procedural

rulemaking. In fact, given the widely varying mission of DOE and NRC with regard to the overall repository process, state and tribal participation in NRC's deliberations and actions vis-a-vis DOE would appear to be crucial for NRC to provide adequate licensing oversight and control.

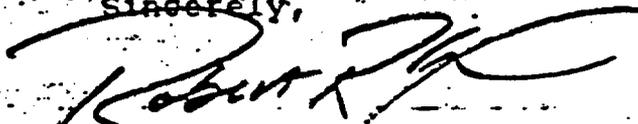
- 5) NRC, through its regulations, should provide full standing for states and affected tribes in the licensing process. Any state or tribe which contains a potentially acceptable site for the construction of a repository should be declared a full party in the licensing proceeding and such status should be stipulated in 10 CFR Part 60.
- 6) We believe that there must be adequate opportunity for states to comment on the Site Characterization Plan during both DOE's and NRC's involvement. The mere fact that DOE is required to hold public hearings and to consult with states and affected tribes is no guarantee that state and tribal concerns will be heeded. Therefore, NRC should request public comment on its Site Characterization Analysis.

A requirement in 10 CFR Part 60 for a draft SCA subject to public comment would allow NRC to assure that the spirit - not just the letter - of the NWPA is being addressed at this crucial stage in repository planning.

- 7) Nevada believes that the Commission is charged with the responsibility to make an independent determination as to whether or not the use of radioactive material is necessary to provide adequate environmental data for a repository construction authorization. It is important that 10 CFR Part 60 clearly specify NRC's responsibility and regulations in this regard.

Enclosed please find a more detailed discussion regarding these aforementioned comments. Should you have any questions, or wish to discuss these issues further, please do not hesitate to contact me.

Sincerely,



Robert R. Loux
Director

RRL:sk
Encl.

COMMENTS OF THE STATE OF NEVADA

**REGARDING AMENDMENTS TO 10 CFR PART 60—DISPOSAL OF HIGH-LEVEL
RADIOACTIVE WASTE IN GEOLOGIC REPOSITORIES:**

Amendments to Licensing Procedures,

SECY-84-263.

The State of Nevada submits these Comments in response to the July 2, 1984 request by Catherine F. Russell, State/Tribal Coordinator, NNWSI, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, United States Nuclear Regulatory Commission. These Comments are made with the understanding that staff is proposing a rulemaking, amending 10 CFR Part 60. The State of Nevada does not waive or relinquish the right to participate in and comment freely in that rulemaking by the submission of these informal comments and reserves the right to raise any issue therein.

Regulatory Amendment Consequent of Passage of the Nuclear Waste Policy Act.

Earlier this year the Commission sought comments on proposed regulatory reforms concerning its general rules of practice contained in 10 CFR Part 2, some of which changes were necessary as a consequence of the passage of the Nuclear Waste Policy Act. In the proposal to which these comments are addressed the staff proposes amendments to the licensing procedures of 10 CFR Part 60 as a consequence of the passage of the Nuclear Waste Policy Act. The Nuclear Waste Policy Act creates new responsibilities for the Nuclear Regulatory Commission and new rights and responsibilities for affected states. In order that the Commission correctly integrate the Nuclear Waste Policy Act into its regulatory framework in a way which provides the states and other interested parties with their full rights under the Act, the Commission should promulgate all new rules reflecting the

passage of the Nuclear Waste Policy Act in one rulemaking, thereby guaranteeing a single, integrated approach and preventing potential contradiction, misunderstanding and confusion. As the discussion below will reveal, both Part 60 and Part 2 are relevant to a state's role in the repository licensing process. That process may or may not be best conducted under the current general rules of Part 2.

State Rights to NRC Information—Consultation.

At page 16 of Enclosure A to SECY-84-263, the staff states as follows:

"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 in law. H.R. Rep. 97-785, Part I at 74."

This basic assumption is incorrect. It is based upon an incomplete reading of the authority on which it relies. Under § 117(a)(1) of the Nuclear Waste Policy Act, 42 U.S.C. 10137(a)(1), a state containing a potentially acceptable site is entitled to complete information from the NRC, as well as from DOE and "other agencies involved." Section 117 does provide new rights to the states which did not exist before the enactment of the Nuclear Waste Policy Act.

The authority upon which the staff relies is found at page 74 of the Report of the Committee on Energy and Commerce on HR 6598, which contained the language now found in § 117 of the Act as passed. The complete relevant text is as follows:

"Consultation With States and Indian Tribes

Section 117(a)(1) directs the Secretary, the Commission and all other involved agencies to provide the governor and the state legislature and, where appropriate, the governing body of any Indian tribe affected, timely and complete information regarding determinations or plans made with respect to the siting, design, construction, operation or regulation of a repository. While it is expected that the appropriate state and Indian officials will be informed of pending decisions in time

for these officials to provide their comments and be afforded the opportunity to have their views heard prior to the time when a decision becomes final, it is not intended that this provision give the appropriate state and Indian officials any additional rights to information beyond those already provided in law to parties and the states regarding the licensing decisions of the Nuclear Regulatory Commission prior to the public announcement of such decisions. It is expected that the Commission will provide the appropriate state and Indian officials with timely access to information regarding determinations or plans available to the Commission with respect to an application to construct or operate a repository. This provision does not vest these state and Indian officials with any new statutory cause of action against the Commission regarding the internal deliberations of the licensing board, the appeals board or the Commissioners regarding matters which are under consideration or which are in dispute, or impose any requirement that the Commission and its hearing boards must consult with the appropriate state or Indian officials prior to deciding an issue which is within the licensing authority of the Commission."

It is clear from a complete reading of the relevant report language that the Committee on Energy and Commerce intended that the rights granted to states under § 117(a)(1) be limited only to the extent that they do not grant to states access to the deliberations of a licensing board, appeals board or the Commission. "Information regarding determinations or plans made with respect to site characterization, siting, development, design, licensing, construction, operation, regulation, or decommissioning" may at times be within the internal deliberations of such boards or the Commission but generally speaking and certainly at this early stage, would not be.

The State of Nevada is concerned that it be entitled, not only to receive complete information, but to comment upon that information within an NRC procedural framework which allows the consideration of and action upon that comment. Unless such a framework exists, the statutory grant of a right to complete and timely information becomes meaningless.

A relevant case in point is the proposed amendment to 10 CFR Part 60 deleting the requirement that the Site Characterization Report (plan) be made

available to state and Tribal officials and to the public because it is duplicative of the statutory requirement that the Department of Energy do the same. See discussion at page 14, Enclosure A, SECY-84-263. Though Nevada would certainly agree that current 10 CFR § 60.11(c) is duplicative of the statutory requirement, § 60.11(d), and (e) are not. Section 60.11(e), in particular, requires not only at least a 90 day comment period, but that the Director's final site characterization analysis "take into account comments received and any additional information acquired during the comment period." The State of Nevada is concerned that the Commission not forego its role of listening to the states and heeding their comment, in deference to the Department of Energy. As the State of Nevada became so completely aware in the process of NRC concurrence in DOE Siting Guidelines, the Commission has a capability of listening to states and considering their comment which the Department of Energy may not have because of its mission orientation with respect to repository development.

The Licensing Process.

Relevant Statute and Rules.

It is basic that the NRC's grant of a license to construct a high-level nuclear waste repository is controlled by § 114(d) of the Nuclear Waste Policy Act, 42 USC 10134, and by "the laws applicable to such applications," i.e., the Atomic Energy Act and the Energy Reorganization Act of 1974. Though it does not now specifically so provide, one would assume that 10 CFR Part 2, subpart G, Rules of General Applicability, would apply to repository licensing proceedings. Of course, 10 CFR Part 60 would apply, and prior NRC decisions and case law construing both are relevant.

Assuming this to be the complete body of law describing how NRC repository licensing would occur, numerous questions now exist about a host state's role in the licensing process.

Host State as a Party in License Proceeding.

Neither 10 CFR Part 60, in its current or proposed form, nor 10 CFR Part 2, subpart G declare overtly that a state within which a nuclear waste repository is proposed to be placed will be a full party to the license proceeding. Because the Nuclear Waste Policy Act describes the significance of state participation in waste facility licensing, a host state would certainly meet judicial standards of standing and would be an eligible intervening party as that concept is utilized in 10 CFR, S 2.714(f) as proposed in 49 F.R. 14698 earlier this year. 10 CFR Part 2, subpart G would control standards for state participation in license proceedings under the proposal contained at page 12, Enclosure G, SECY-84-263. This proposal is not, however, adequate in the eyes of the State of Nevada. Any state which contains a potentially acceptable site for the construction of a repository should be declared a full party in the future license proceeding by rule. As such a party, not a mere intervener, the state should be entitled to equivalent procedural rights and amenities as the Department of Energy. This would, of course, include the right to introduce evidence, put on witnesses, cross examination, full notice and service of all pleadings, full rights of discovery, and standing to appeal.

At page 18, Enclosure A SECY-84-263, the proposal states that "Affected states and Indian tribes will be entitled to participate in the licensing proceedings." It would seem that the staff agrees with the obvious conclusion that states are entitled to be full parties. Yet the proposed rule leaves a state's party status to later determination. That determination should be made now, a party status guaranteed by rule.

One problem with the deferral of the determination of host state party status is the exclusion of a potential host state from meaningful interaction with the Department of Energy and Nuclear Regulatory Commission in precicensing matters. For instance, the NRC/DOE Procedural Agreement, Enclosure F, SECY-84-263, provides for a significant amount of interaction between the license applicant, DOE, and the licensing agency, NRC. The only role allowed states in this NRC/DOE interaction is the ability to attend technical meetings under paragraph 2.e. if a potential host state is to become prepared to adequately protect its interest in a repository licensing proceeding it must stand on an equal footing with the applicant, as a party with full right to participate in the precicensing process along with the applicant and the licensing agency.

Site Characterization Plan

As discussed at page 23, Enclosure A, SECY-84-263, "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 the DOE 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." Proposed § 60.18(c) in fact requires the Director to review the site characterization plan and prepare a site characterization analysis. Though the Director is required to publish a notice that the analysis is available and allow 90 days for comments, there is no requirement that comments received from states or other interested parties to the site characterization analysis receive any substantive weight. Unless such a provision is included, a state cannot be assured that its comments will be heeded. While the Nuclear Regulatory Commission may be worthy of a state's trust that it will heed state comment, this requirement should be reduced to rule to insure state involvement.

The State of Nevada agrees with the statement, at page 14, Enclosure A, SECY-84-263, that "Congress intended that DOE should provide the [site characterization] 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."

Use of Radioactive Material in Characterization

Section 113(c)(2)(A) of the Nuclear Waste Policy Act, 42 USC 10133, specifies that the Department of Energy "may not use any radioactive material at a candidate site unless the Commission concurs that such use is necessary to provide

data for the preparation of the required environmental reports and an application

for a construction authorization for a repository at such candidate site;". The discussion at page 24, Enclosure A, SECY-84-263, and the amendatory proposal at

proposed § 60.18(e), page 8, Enclosure G, SECY-84-263, do not correctly apply the statutory requirement. The discussion at page 24, Enclosure A, suggests that the

statutory language only confirms that DOE does not need a license to engage in

site characterization using radioactive material. Though a full license, as that

term is ordinarily used, may not be required, the NRC must "concur" with the

Department of Energy that the use of radioactive material is necessary to provide

data for preparation of the required environmental reports. Note that the same

verb, "concur," is used in this context and in § 112(a), NRC statutory responsibility

with respect to guidelines.

Proposed § 60.18(e) suggests that either the Commission's concurrence will be

granted "if appropriate", or another reading, that the Commission will concur if the

site characterization plan includes the use of radioactive material. Either reading

is inconsistent with the requirements of the statute. The NRC is charged with an

independent determination whether the use of radioactive material is necessary to provide adequate environmental data.

Comments Regarding Proposed Text

Section 60.17(a).

The term "area to be characterized" has been substituted for the statutory term "candidate site." Though Nevada is sensitive to the justification for this change, stated at page 19, Enclosure A, SECY-84-263, the introduction of this new term can only create controversy and uncertainty over its meaning. We suggest returning to the statutory language.

Section 60.17(a)(2)(iv).

The phrase "any adverse impacts from site characterization that are important to safety" has been substituted for the statutory phrase "any adverse, safety-related impacts from such site characterization activities" Though it is not clear at the outset what is the difference between these two phrases, less confusion will be caused if the statutory phrase is used.

Section 60.18(e).

See discussion above at pages 7 and 8.

Section 60.18(f), (j).

See discussion above at pages 6 and 7.

Section 60.18(g).

The term "semi-annual reports" is incorrect as the statute and proposed rule require that the Secretary report to the Commission and the governor or

legislature "not less than once every 6 months." It is inappropriate that the Commission waive its expectation for more than the minimum reporting from the Department of Energy.

Section 60.18(1).

The caveat contained in this subsection is appropriate and correctly stated. Note that the issue contained in this caveat is the same issue raised by the Energy and Commerce Committee report 97-785 discussed at page 3 above, rather than the issue for which that report is cited at page 16, Enclosure A, SECY-84-263.

Section 60.63(a).

The subsection as drafted does not grant potential host states full party status in licensing or proceedings or prelicensing activity. See discussion at pages 5 and 6 above.

Conclusion.

The Commission should utilize a total integrated approach to the enactment of rules consequent of the passage of the Nuclear Waste Policy Act. Those integrated rules should provide for full participation by affected states, defining their status as parties in any construction authorization proceeding at the outset. As part of the prelicensing activity, an affected state should be entitled to comment on proposed NRC action with the expectation that comments will be heard, and when meritorious heeded. For instance, the NRC's site characterization analysis should be finalized only after the opportunity for state comment. When regulations are adopted, new concepts should not be introduced by variance from statutory language, except where necessary to more greatly define statutory requirements.

ENCLOSURE C

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OFFICE OF THE GOVERNOR STATE CAPITOL AUSTIN, TEXAS 78711

September 19, 1984

WM Record File 105.2

Regis Doyle S. Regnier please get cc to Renard and ED right away W.M. Project

Docket No. PDR LPDR

Mr. Robert Browning, Director Division of Waste Management U. S. Nuclear Regulatory Commission Washington, D.C. 20555

Distribution: RPL: MJB JAB: JJS (Return to WM, 623-SS) [initials]

9/25

Dear Mr. Browning:

We appreciate the opportunity for continued consultation with you and your staff on the draft revision of 10 CFR 60 -- "Disposal of High-Level Radioactive Wastes in Geologic Repositories". While we find no objection to most of the proposed modifications, there are several key points on which we are compelled to comment: (1) opportunity for state comment on the NRC site characterization analysis prior to its submission to the Department of Energy, (2) irrevocable commitment by NRC to explicitly respond to the affected state comment on site characterization analyses, and (3) a defined mechanism for appeal to the Commission of state participation decisions by the Director of the NRC Office of Nuclear Material Safety and Safeguards (NMSS). Section references below apply to the July, 1984 draft revision to 10 CFR 60 (Document 7590-01).

Items (1) and (2) above concerns subpart B, sections 60.15 through 60.18 addressing site characterization. In order to offer explicit comments on these sections, knowledge of the mechanics and schedule of interactions between NRC and DOE in the site characterization process is necessary. The Nuclear Waste Policy Act provides broad guidance on this portion of the high-level waste disposal program. The Act also provides in section 117 that the Commission shall provide timely and complete information for, among other things, site characterization plans. Consistent with these provisions of the Act, we recommend that one or more meetings be held for DOE, NRC, potential host states, and affected Indian tribes to develop the mechanics of the interactions surrounding the site characterization plan, site characterization analysis, comments of the affected states and Indian tribes, and the initiation of site characterization activities. Until this process is adequately defined we cannot prepare comprehensive comments on the portions of 10 CFR 60 addressing participation in the site characterization planning process.

In spite of the uncertainty presented by the lack of detail for the site characterization planning process, we have prepared comments on the current draft revision of 10 CFR 60 based on assumptions regarding details of that process. The three key assumptions are: (a) the DOE will not commence site

ENCLOSURE C

Mr. Robert Browning, Director
Division of Waste Management
September 19, 1984
Page 2

characterization until the final site characterization analysis has been submitted to them and addressed, (b) the NRC will be allocated sufficient time to complete a comprehensive process for assessment of the DOE site characterization plan, and (c) the DOE site characterization plan will be modified to address the issues presented in the site characterization analysis before site characterization begins. As noted above, final comments on 10 CFR 60 cannot be prepared until these key issues are definitively addressed.

With respect to the opportunity for state input, the revised rule contains two relevant provisions. At subsection 60.18(c) the Director of NMSS is permitted (but not required) to "invite and consider the views of interested persons on DOE's site characterization plan". This mechanism could allow some affected state input but only at the discretion of the Director, and the comments would not be based on a draft site characterization analysis, in view of the removal of this provision in the draft revision. The other relevant provision (subsection 60.18(f)) of the draft revision instructs the Director of NMSS to request public comment on the site characterization analysis, but it is our understanding that the opportunity for comment will occur after the site characterization analysis is submitted to the DOE and further that the comments will then simply be filed in the NRC Public Document Room.

We submit that offices and agencies of each potential host state are uniquely qualified, because of extensive familiarity with geotechnical and other factors regarding the potential sites and vicinities, to identify relevant issues to be addressed in the site characterization plans and the analyses of those plans. For example, in Texas, we have obtained data from the Texas Department of Water Resources on quality and availability of water from a water-bearing unit that had not been considered by DOE. This recognition of unique state perspective was, in fact, noted by the NRC in NUREG-0539, "Means for Improving State Participation in the Siting, Licensing, and Development of Federal Nuclear Waste Facilities."

The need for greater state input in the licensing process was clearly articulated in one of the key waste management studies of recent years, the "Report of the President by the Interagency Review Group on Nuclear Waste Management (TID-29442, pp. 95-96). Although, the Nuclear Waste Policy Act requires that hearings be held in the vicinity of sites to be characterized, our experience suggests that DOE responses to these comments will not be adequate. The critical licensing role played by NRC should enhance the likelihood of DOE attention to concerns identified by the states if the NRC finds merit in those concerns and passes them on to DOE in the site characterization analysis.

With respect to our concern that the NRC respond directly to comments of affected states, the key role of these states in the high-level waste management issue is clearly articulated in the Nuclear Waste Policy Act. State leadership of the affected states is identified as the focal point for interaction between the federal government and affected parties. Because of that

Mr. Robert Browning, Director
Division of Waste Management
September 19, 1984
Page 3

responsibility, it is essential that the state receive direct responses to concerns submitted to federal authorities on key program documents -- such as the site characterization analysis. We, therefore, recommend alteration of 10 CFR 60 to include an irrevocable commitment for direct NRC response to state comments on that document. Congress recognized the states' critical need for full information and, furthermore, grants specific authority to obtain that information in section 117 of the Nuclear Waste Policy Act.

Finally, item (3) above concerns the provision in subpart C, subsection 60.63(e) which states that the Director of NMSS will accept or deny state participation proposals. In view of the relatively subjective determination required to make such a decision based on the specified criteria (subsection 60.63(d)), we are concerned that a mechanism be defined for appeal of unfavorable decisions to the Commission. Based on discussions with you and your staff on July 27, 1984 and August 9, 1984, we understand that staff decisions can always be appealed to the Commission itself and explicit statement of that option in 10 CFR 60 is not required. This understanding, if correct, sufficiently addresses our concern about this provisions. We strongly support your suggestion that language noting this opportunity for appeal to the Commission be included in the Statement of Consideration for this rule.

We appreciate your providing a copy of your draft revision of 10 CFR 60 for review. I hope these comments are helpful in this revision of the high-level radioactive waste disposal regulations.

Yours truly,



Dan Smith, Assistant Director
Nuclear Waste Programs Office

DS:dp

cc: Steve Frishman, Director, Nuclear Waste Programs Office

ENCLOSURE D

ENVIRONMENTAL POLICY INSTITUTE

August 3, 1984

Mr. Bob Browning
Director, Division of Waste Management
U.S. Nuclear Regulatory Commission
SF 623
Washington, D.C. 20555

WM Record File
105.2

WM Project: _____
Docket No.: _____
PDR _____
LPDR _____

Distribution: _____
RFR/MSB SUB _____
MATTSON _____
(Return to WM, 623-SS) _____

Dear Mr. Browning,

Enclosed are the Environmental Policy Institute's comments on "10 CFR Part 60-- Disposal of High Level Radioactive Waste in Geologic Repositories: Amendments to Licensing Procedures, SECY-84-263." These comments come in response to Donna Mattson's letter of July 2, 1984.

We thank you very much for the opportunity to comment.

Sincerely,

David Berick
David Berick

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ENCLOSURE D

DRAFT COMMENTS OF THE ENVIRONMENTAL POLICY INSTITUTE ON
SECY-84-263--10 CFR PART 60 AMENDMENTS TO LICENSING PROCEDURES
July 31, 1984

Significant improvements have been made in the NRC's proposed changes to 10 CFR Part 60 in SECY-84-263 over versions which were circulated to state officials and other interested parties last year. For example, SECY-84-263 reestablishes an NRC role in reviewing the DOE site selection process, notably by incorporating NRC review of the DOE environmental assessments. These comments should be read in that light.

My primary concern is that in making changes to Part 60, that NRC develop and include in the rule a solid foundation defining its purpose and authority. I believe that this is lacking in several key areas, most notably in a reliance upon the DOE/NRC Procedural Agreement as a source of Commission authority rather than upon independent statutory authority for early site review.

General Comments

The proposed rule fails to establish a common, strong rationale for its various recommendations. For example, the proposed rule identifies ~~5 "principal aspects"~~ of NRC repository licensing procedures and rather arbitrarily decides to address only 2. Whether or not we would agree with the justification, one ought to be given.

As we stated last year, we do not believe that the Part 60 revisions should be split apart into separate rulemakings, especially the NEPA revisions. A year ago, the argument was made that Part 60 NEPA revisions would be made after Part 51 was revised. Part 51 has been revised as of March 12, 1984 (49 FR 9352). If Part 60 is to be modified it should be done as a cohesive package, which may, of course, be present in the Staff's minds, but the apparent piecemeal revision leaves those outside the Commission with a fragmented rule and rulemaking process.

It is not clear whether the Commission believes that the NWA actually alters its authority to license, thereby requiring modification to Part 60, or whether the Commission is simply modifying its procedures to reflect the new schedules and procedures imposed on DOE by the NWA. I would argue that the latter is the case, and that the Commission should make absolutely clear that its licensing authority is not constrained or restricted by the NWA. This is not clear from a reading of the proposed rule and should be stated.

Likewise, the proposed rule also fails to establish a clear and cohesive articulation of the Commission's authority and purpose for the changes that are proposed. The most serious problem here seems to be a reliance upon the DOE/NRC Procedural Agreement for its early site review without reference to any

statutory authority; even the statutory authority used to support the Procedural Agreement originally(see pp 10-11 of the proposed rule, Attachment A, SECY 84-263). I do not believe that relying solely on the Procedural Agreement gives the Commission the kind of solid foundation to carry out early site review activities that it needs or that it has under the Atomic Energy Act.

As we stated in our comments a year ago, we believe that the Commission has "health and safety" and NEPA authority to require early site review; authority referenced in the preamble to Part 60 wherein the Commission stated that its requirement for site characterization extended beyond a concern for compliance with NEPA to protection of public health(see 46 FR 13972, February 25, 1981). If the Commission originally, in promulgating Part 60, had authority to review site selection activities, it has no less authority today as a result of passage of the NHPA.

The basis for the Procedural Agreement, now a central part of NRC's role in regulating DOE waste repositories, should be incorporated into Part 60 rather than basing Part 60 on the Procedural Agreement.

We commend the proposal for continued NRC attention to early site review including review of the DOE's environmental assessments to accompany nomination. Our primary concern, again, is that rather than conforming the current Part 60 requirements for early site review, which embody both NEPA and health and safety concerns, to the new DOE procedures, the rule appears to cast doubt on the Commission's authority and purpose for future site review by relying upon "fulfillment" of the Procedural Agreement.

Section-By-Section Comments

SECY-84-263

page 4) SECY paper states at top of page that NRC is "not required by law or regulation to review the EA." While it is true that the NHPA does not specifically require NRC to review the EA, a case can be made that NRC is required to oversee site selection activities, under NEPA and AEA. As noted above, the language of this paragraph casts a cloud over the Commission's authority to conduct the activities it subsequently recommends.

page 4) SECY paper proposes to defer NEPA issues related to Part 60 to a future rulemaking specifically on Part 51. We continue to believe that this aspect of the rulemaking, which constituted a central part and underpinning of the current version of Part 60, should not be separated. Because so much of Part 60 now rests on NEPA authority, failure to include NEPA once again casts something of a cloud over the Commission's view of its authority to carry out early site review.(It may also skew the scope of EA review by precluding review of alternatives and comparative analysis; a central part of the EA's--see below).

page 4) SECY paper proposes to require NRC review of the DOE EA's which are to accompany site nomination. The rationale for this is explained as being "in the light of the NRC/DOE Procedural Agreement" and the paper goes on to say to suggest that NRC review "would not be of the process by which DOE screened sites and compared alternatives."

On the one hand, the Commission argues that the EA is now the document that incorporates the DOE site selection/screening aspects of the DOE program required to be reviewed by NRC under Part 60. It then appears to turn around and state it will review EA's, but not the site selection/ screening aspects. As the Commission knows, a description of the siting process and a comparative evaluation of sites are central parts of the EA's (Sec. 112(b) of NWPA). The decision to ignore the site selection/screening aspects of the EA may stem from the earlier decision to defer NEPA issues; this was argued in the NRC's previous proposal. NRC does not adequately explain its decision to defer NEPA issues. Because site selection and comparative evaluation of sites are central to the EA's and to early site review, these should not be excluded from NRC review.

Proposed Rule (Attachment A)

p. 2) Proposed rule identifies 5 pending issues affecting NRC licensing rules for repositories and ~~singles out~~ 2 for revision now. As stated above, we believe that the Part 60 revision should not be done in a piecemeal fashion and that at a minimum the NEPA issues should be incorporated.

p. 3) As noted above, NRC would exclude NEPA issues from this rulemaking. We do not believe that this exclusion is helpful to the Commission's review of siting activities since it appears to limit the scope of some reviews (such as the EA review) and creates a piecemeal process of rule and application of Part 60.

pp. 9-11) As noted earlier, this section discusses the need for revisions to Part 60, but fails to establish a clear rationale for those changes. Review of the EA's are predicated on the existence of the Procedural Agreement rather than specific statutory authority and purpose. Here and on page 12 NRC develops an argument that early site review is needed to provide "early detection" of potential licensing problems. We have no argument with this policy but it seems an inadequate basis for future interpretation of Part 60.

p. 13) NRC states that it will review the EA's but will not review the methodology used to compare sites nor the relative merits of one site over another. NRC states that this is not necessary to to "fulfill any of its statutory responsibilities." The latter statement is entirely at odds with the role the Commission has taken in its concurrence of the DOE site selection guidelines (noted in the following sentence in the text) where NRC actively shapes DOE's site selection process. It also

ENCLOSURE E

presumes an interpretation of the Commission's NEPA responsibilities (contrary to that currently embodied in Part 60) to the effect that NRC NEPA responsibility does not depend upon DOE's site selection determinations. The decision to defer NEPA issues from this revision of Part 60 may merely highlight this presumption, but I believe that NRC is overly restricting its authority, its role in reviewing DOE siting activities, and its NEPA authority.

pp. 14-15 As noted earlier, NRC rests much of its early site review on the existence of the DOE/NRC Procedural Agreement. This may be an appropriate way for NRC and DOE to fulfill Part 60 licensing regulations but the Agreement cannot substitute for those regulations. Part 60 should be revised, if needed, to explicitly require DOE to provide information, access to sites, etc. at early site selection stages, which can be fulfilled through an MOU.

pp. 14-15 NRC proposed to drop the Draft Site Characterization Assessment from Part 60. We continue to believe that this is unnecessary and unproductive. We believe that it important, prior to the commencement of characterization, to identify what issues the NRC and DOE have reached agreement on and what issues remain unresolved over the many months of pre-characterization activities. Once issues are identified and their status determined, interested parties should be allowed to comment on the adequacy of the Commission's interpretation of that information and DOE's characterization plan and to raise any new issues. This should occur prior to the commencement of characterization. The NRC proposal would allow characterization activities to proceed prior to an opportunity for comment to NRC.

We do not believe that submission of a draft site characterization plan would "freeze" the review process since DOE is required by the NWPA, and by NRC, to submit periodic updates on its characterization activities. NRC, ironically, does not describe this "post-approval" aspect of its "dynamic" review process here nor how it will assess these periodic updates nor address public comments.

Lastly, the assurances contained in the Procedural Agreement that states and Indian tribes will be given notice of DOE/NRC meetings and right of attendance should, at a minimum extend to other interested parties and the public. Substitution of the Procedural Agreement notification scheme for an open public comment period on the Draft SCA is not, as suggested by the Commission, congruent. NRC should include a statement assuring public participation beyond the Procedural Agreement lest it be interpreted as a limitation on such participation.

pp. 16-17) The Commission may want to point out that Congress in the NWPA has now required DOE to provide states and Indian tribes with full rights of consultation and cooperation and consequently the Commission's original concerns, expressed in Part 60, have been largely alleviated. What is not stated here, and should be,

is that the Commission's own authority to consult with state governments and Indian tribes is substantially unaltered by the NWA. For example, Sec. 117(c) which authorizes DOE to enter into written agreements contains a specific caveat that they shall not affect the authority of the Commission.

p. 27) As noted above, reliance upon the Procedural Agreement notification scheme to assure participation in the site review process (Sec. 60.62) does not adequately address the needs of other interested parties and the public. NRC should include a statement of intent to provide for public participation beyond the Procedural Agreement scheme.

p. 34) As noted earlier the deletion of the Draft SCA removes an important opportunity for public comment on both DOE and NRC site characterization activities. At a minimum, the Director should be required to solicit and consider comments on the DOE site characterization report. While many relevant comments may be transmitted by DOE's comment process, NRC should, at a minimum, be required to solicit any relevant comments. The discretion to solicit comments should be made mandatory.

p. 34) NRC suggests that its review and concurrence in DOE's use of radioactive materials in site characterization is optional. NRC uses the phrase "as appropriate" in subsection (e). NRC's agreement in DOE's use of radioactive material is not optional under Sec. 113(c) of the NWA.

p. 34-35) NRC should establish a notice and comment process for the semiannual site characterization reports (subsection (g)) along the lines of the comments allowed on the SCA. This would provide all parties with an opportunity to bring issues to the Commission's attention involving ongoing site characterization activities at the same time the Commission was conducting its review.

pp. 36-38 The participation provisions of Subpart C appear to be triggered at different points in the site selection process. Information, to be provided under Sec. 60.61, is triggered by the submission of a site characterization plan. Consultation in site review is triggered by Presidential approval of a site for characterization under Sec. 60.61. In both cases, it appears to us that the Commission is withholding information and consultation until a fairly late stage of the site selection process. By the time the SCP is submitted, DOE will have conducted lengthy site selection activities, will have completed EA's on the sites and nominated them. Because the amount of time which elapses between nomination and submission of the SCP is expected to be only a matter of months, it would seem realistic to allow states to begin formal information exchanges and consultation at least at the point of nomination. We think that this should in fact occur even earlier at the point when a state is notified that it is a "potentially acceptable site" under Sec. 116.

STAFF ANALYSIS OF COMMENTS

1) NRC REVIEW OF DOE'S SITE SCREENING AND SELECTION PROCESS

Comment: Nevada, Minnesota, and the Environmental Policy Institute commented that the Commission has a broad responsibility to review the site screening and selection process. They believe that the NRC is being overly restrictive in its interpretation of its responsibility by neglecting the site screening and selection process. They urged the Commission to clearly affirm its role in site screening and selection in 10 CFR 60.

Staff Response:

The Nuclear Waste Policy Act (NWPA) sets out a detailed procedure for site screening and selection. NRC is given a specific role in this process-- concurrence in the guidelines for site selection which the NWPA requires DOE to develop. By concurring in the DOE siting guidelines, the Commission has essentially approved the site selection process that will be used by the Secretary to recommend sites for repositories. When the guidelines are in place, DOE has the responsibility to apply them. No other NRC role in site selection is indicated.

Site screening and selection information will be contained in the environmental assessments (EA's) which DOE must prepare. While the NWPA makes no provisions for the Commission to review the EA, the staff has taken the position that the NRC may properly review and comment on the EA. The bases for reviewing the EA are as follows:

(1) Potential Safety Issues

Review of the EA may result in the early identification of potential safety issues that could affect the Commission's later licensing responsibilities. The staff will review the EA to identify such potential licensing issues.

(2) Application of Siting Guidelines

The staff will review the EA to ascertain if there has been:

- (a) a clear failure on the part of DOE to follow the procedures established for application of the siting guidelines; or
- (b) any manifestly unreasonable conclusion with respect to the consistency of the site with the siting guidelines.

ENCLOSURE E

(3) Special Expertise

By reviewing and commenting on an EA - as it would any sister agency's draft EIS - the staff can provide DOE with the benefit of NRC's special expertise in matters related to the siting and operation of nuclear facilities.

The staff regards the Procedural Agreement with DOE as the appropriate vehicle for assuring early informal interaction between the two agencies, including interaction with respect to environmental assessments. Because this interaction on the EA is not mandated by the NHPA, there is no need to provide for it in the regulations. It would be preferable instead to explain the policy, as the statement of considerations does, so that all interested persons are aware of the course that NRC proposes to take.

The commenters also suggested that inasmuch as the NHPA states that the site characterization plans are to include "any other information required by the Commission," NRC should provide for submission by DOE of information on its site screening process. However, the information that may be required under this provision of the NHPA is only that which falls within the scope of "a general plan for site characterization activities." NRC will need to know the information about the site that DOE has developed in the course of its site selection, and this information is specifically called for. Although site selection information is required to be submitted under existing Part 60, Congress elected to delete it from the site characterization plan. Therefore, NRC will not require information about the screening and selection process employed by DOE and the comparative analyses that led to the recommendation of particular sites. A review of the characterization program can be carried out for a site described in a site characterization plan without a review of the process by which the site was selected.

With respect to comments on NRC's NEPA role, NRC's statutory responsibility under the NHPA is to adopt, "to the extent practicable," the DOE environmental impact statement. The EIS will present as alternatives, three sites which have been characterized and as to which the Secretary has made a preliminary determination of suitability for development consistent with the guidelines which were concurred in by the Commission. As discussed above, the process used by the Secretary to compare potentially acceptable or nominated sites and the relative merits of the sites that led them to be selected for characterization are not statutorily of concern to the Commission -- because the EIS is to deal with the sites that actually have been characterized and not with those that were not characterized.

2. DECOUPLING OF PART 60 AND PART 51 REVISIONS WHICH ARE NEEDED TO REFLECT THE NUCLEAR WASTE POLICY ACT

Comment: Nevada and the Environmental Policy Institute (EPI) believe that all revisions to Part 60 and Part 51 to conform them to the NHPA should be promulgated simultaneously. In particular, they believe that the revisions concerning NEPA requirements should accompany the revisions currently being proposed. They believe

this would assure that a comprehensive and integrated approach is taken and that any confusion regarding NwPA and NEPA requirements is eliminated. EPI contends that much of Part 60 now rests on NEPA authority so that failure to include NEPA in the currently proposed revision casts a cloud over the Commission's view of its authority to carry out early site reviews. EPI believes it may also skew the scope of environmental assessment review by precluding reviews of alternatives and comparative analysis.

Staff Response:

The staff has not put off considering the responsibilities of the Commission under NEPA as modified by the NwPA. In developing these proposed regulation changes, the staff has specifically evaluated whether it was necessary for the Commission to take any steps during the site screening stages to assure meeting its ultimate NEPA responsibilities. The staff concludes, as explained above, that NRC pre-licensing review should not be exhaustive, and in this regard it differs from the commenters. In light of the staff's understanding with respect to NRC's responsibilities, it would be important and appropriate to proceed with the present action without awaiting other changes that will be proposed in the light of the NwPA. In view of the need to publish those changes related to the site characterization plans prior to the rapidly approaching time when DOE prepares those plans, it was necessary to consider these changes first and separately. These issues are separable from other NwPA-mandated matters, including NEPA concerns. The NEPA related amendments to NRC rules (1) will define the alternatives that must be discussed in an environmental impact statement, (2) will exempt the promulgation of NRC licensing requirements and criteria from environmental review under NEPA, and (3) will set out the procedures that will be followed by the Commission in determining whether or not to adopt the EIS. (There may also need to be some special provisions if DOE were to develop a facility exclusively for waste from atomic energy defense activities.) The alternatives are, in principal part, defined by NwPA. The exemption for environmental review of the promulgation of licensing rules is also explicitly stated by that Act. The procedures for adoption of the DOE environmental impact statement are mandated generally by NwPA and regulations of the Council on Environmental Quality. All of these matters are readily separable from the proposed amendments. Furthermore, the staff does not anticipate that the 10 CFR Part 51 amendments will address the commenters' concerns over the pre-licensing review of the DOE site selection process. Therefore, publication of the proposed rule need not be deferred.

3. ELIMINATION OF THE DRAFT SITE CHARACTERIZATION ANALYSIS

Comment: Nevada, Minnesota, and the Environmental Policy Institute commented that the deletion of the provision for a draft site characterization analysis removes an important opportunity for

public comment on DOE and NRC site characterization activities. They believe that the provision for a draft site characterization analysis with mandatory public comment should be retained. If the draft site characterization analysis is to be dropped, the Environmental Policy Institute thinks that at a minimum NRC should be required to solicit and consider comments on the DOE site characterization plan instead of leaving the solicitation and consideration of public comments at the discretion of NRC. Texas believes that NRC should be required to solicit, consider, and respond to State comments on the site characterization analysis prior to it being sent to DOE.

Staff Response:

The rule was promulgated with provision for a draft site characterization analysis when there were no other provisions for State or public involvement in the site characterization plan process. Retaining the provision for a draft site characterization analysis with a public comment period is unnecessary because of the opportunities now provided under both the NWPA and the NRC/DOE Procedural Agreement for host States and affected Indian tribes to raise issues previously and comment on DOE's site characterization plan. Given these opportunities, the staff believes that a requirement or a fixed policy of soliciting comments before issuing its analysis could result in unnecessary and unproductive delay in the process of publication of the final site characterization analysis. We will follow the DOE hearings and be aware of the comments which are given to DOE by the public. We will also solicit comments on the site characterization analysis following its issuance. The staff believes that (as provided in the proposed rule) NRC should have the discretion to determine, in each particular instance, whether it would be advantageous to solicit and consider public comments on DOE's site characterization plan before issuance of its site characterization analysis. The extent to which early reviews have afforded an opportunity for interested persons to identify issues of concern, the need for additional expertise that might not be fully available at NRC, and the impact upon achievement of the scheduling directives of NWPA, are some of the factors that might be considered.

4) CONCERN ABOUT THE BASIS FOR STANDING OF STATES AND TRIBES IN A LICENSING HEARING

Comment: Minnesota and Nevada believe that States should not be governed by the 10 CFR Part 2 Rules of Practice concerning standing in a licensing hearing. They want full party status to be stipulated by Part 60 for the host State and affected Indian tribes. Nevada wants full party status for any State or tribe which contains a potentially acceptable site for a repository. (Note: to date DOE has identified 6 States with potentially acceptable sites for the first repository and is considering identifying such sites in 17 other states for second repository.) Nevada believes that such designation would accord them greater procedural rights. They want to "stand on an equal footing" with DOE during the prelicensing process instead of having the

more limited participation provided in the NRC/DOE Procedural Agreement. They believe that designation as a party in Part 60 would give them rights to participation in the prelicensing process equal to those of NRC and DOE. Minnesota expresses concern that currently proposed revisions to 10 CFR Part 2, April 12, 1984 (49 FR 14698) prevent States, local governments and Indian tribes from effectively participating in NRC licensing hearings of any kind.

Staff Response:

Rights of participation in licensing proceedings are, as noted, defined in Part 2. The tests of standing as set out by § 2.714 are clearly met for host State participation (and presumably for affected Indian tribes as well). However, a host State or affected Indian tribe would need to formalize its intention to participate in licensing proceedings and set forth the contentions which it seeks to have litigated. § 2.714 explains how this is to be done. Once the State/tribe is admitted as an intervenor it would enjoy the full rights of a party. These include, with respect to all matters affecting its interest, the rights to introduce evidence, put on witnesses, cross examination, full notice and service of all pleadings, full rights of discovery, and standing to appeal. For non-host States designated as having potentially acceptable sites, it is appropriate that their participation in licensing proceedings be determined by the tests of standing set out in 10 CFR Part 2.

In addition, 10 CFR 2.715(c) of the Commission's regulations provide for the participation of an interested State (as well as counties and municipalities) in NRC proceedings even if it chooses not to litigate particular contentions in the proceeding. In this role the State has an opportunity to introduce evidence, interrogate witnesses, and advise the Commission without taking a position on any issue; it may also file proposed findings and petition for Commission review of a Licensing Board decision. 10 CFR 2.715(c) extends this opportunity to participate as an interested State not only to the State in which a facility will be located, but also to those other States that can demonstrate an interest cognizable under Section 2.715(c).

In regard to the commenter's concern with the April 12, 1984 Federal Register Notice related to the Commission's Rules of Practice, this was not a notice of proposed rulemaking. Rather it was a compilation of various suggestions for improvement in the licensing process which have been brought to the Commission's attention. As noted in the Federal Register Notice, if, and when, the Commission decides that any of these suggestions warrant adoption through rulemaking, a notice of proposed rulemaking will be issued. This will provide the concerned States and others with an opportunity to comment on a particular proposal. Furthermore, since a State can meet the requirements of standing to participate as a party in an NRC licensing proceeding, and has available to it the more liberal participation provisions of 10 CFR 2.715(c), the suggestions contained in the Federal Register Notice--even if ultimately proposed by the Commission--would not prevent States, local governments,

and Indian tribes from effectively participating in NRC licensing proceedings.

As to the comment concerning the extent of participation in technical meetings between NRC and DOE provided for in the NRC/DOE Procedural Agreement, the staff does not agree that the host States and affected Indian tribes "must stand on an equal footing" with DOE. The meetings are designed as a means to facilitate information exchange between DOE and NRC, and it is appropriate that the two agencies be designated the principals at these meetings. The States and affected Indian tribes are assured of full opportunities to take up issues with DOE directly under the consultation and cooperation provisions of NWPA and have also been assured of their opportunities to discuss with NRC staff, matters pertaining to NRC's regulatory responsibilities.



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

November 27, 1979

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: Lee V. Gossick, Executive Director
for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION
79-39, 4:05 P.M., MONDAY, NOVEMBER 26, 1979,
COMMISSIONERS' CONFERENCE ROOM, D.C. OFFICE
(OPEN TO PUBLIC ATTENDANCE)

I. SECY-79-580 - Proposed New 10 CFR Part 60, "Disposal of
High-Level Radioactive Wastes in Geologic Repositories -
Procedural Aspects"

The Commission, by a vote of 4-0*, approved SECY-79-580, including the recommendation to publish for comment a rule that (1) allows DOE to characterize sites by techniques which may include exploration and in situ testing at depth, subject to the review and comment of the Director, NMSS, with opportunity for public comment, but without a licensing decision, and (2) avoids premature commitment to a particular site and medium by providing for site characterization at a number of sites at different locations and in different geologic media, as set forth in Enclosure A to SECY-79-580.

(SD) (SECY Suspense: November 29, 1979)

The Commission requested that:

1. the Subcommittee on Energy and the Environment and the Subcommittee on Nuclear Regulation be informed of this action; (SD/OCA) (SECY Suspense: Nov. 29, 1979)
2. a press release be issued upon filing of the notice of the proposed rulemaking with the Office of the Federal Register. (SD/OPA) (SECY Suspense: Nov. 29, 1979)

* Chairman Hendrie was not present but had indicated his prior approval of the proposed rule and had requested that sentence 2 in the first full paragraph on page 7 of Enclosure A be deleted. Commissioner Kennedy, although approving the rule, voted to delete the sentence as well.

cc:
Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne
Commission Staff Offices ~~800/150279~~



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

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November 21, 1979

OFFICE OF THE
SECRETARY

MEMORANDUM FOR: Lee V. Gossick, Executive
Director for Operations

FROM: Samuel J. Chilk, Secretary

SUBJECT: STAFF REQUIREMENTS - BRIEFING ON SECY-79-580 - PROPOSED
NEW 10 CFR PART 60, "DISPOSAL OF HIGH-LEVEL RADIOACTIVE
WASTES IN GEOLOGIC REPOSITORIES - PROCEDURAL ASPECTS,
10:35 A.M., MONDAY, NOVEMBER 19, 1979, COMMISSIONERS'
CONFERENCE ROOM, D.C. OFFICE (OPEN TO PUBLIC ATTENDANCE)

The Commission discussed the proposed new 10 CFR Part 60, and its possible effect upon the licensing of geologic high-level waste repositories.

The Commission requested:

1. that the Director, Division of Waste Management meet with Commissioner Bradford to discuss research and technical assistance projects in waste management. (NMSS) (SECY Suspense: 11/26/79)

The Commission indicated that all Commissioner Action vote sheets will be completed by November 26, ~~28~~ that Commission action on SECY-79-580 can be completed Monday, November 26.

cc:
Chairman Hendrie
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Bradford
Commissioner Ahearne
Commission Staff Offices

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