

U.S. NUCLEAR REGULATORY COMMISSION

STORAGE AND DISPOSAL OF  
NUCLEAR WASTE



AGENCY: U.S. Nuclear Regulatory Commission

ACTION: Notice of Proposed Rulemaking

SUMMARY: The United States Nuclear Regulatory Commission is conducting a generic proceeding to reassess its degree of confidence that radioactive wastes produced by nuclear facilities will be safely disposed of, to determine when any such disposal will be available, and whether such wastes can be safely stored until they are safely disposed of. This rulemaking has been initiated in response to the decision of the United States Court of Appeals for the District of Columbia Circuit in State of Minnesota v. NRC, Nos. 78-1269 and 78-2032 (May 23, 1979), but it also is a continuation of previous proceedings conducted by the Commission in this area. 42 FR 34391 (July 5, 1977).

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This notice describes the procedures the Commission will employ to conduct that proceeding and how members of the public can participate. If the Commission finds from this proceeding reasonable assurance that radioactive wastes from nuclear facilities will be safely stored or disposed of off-site prior to the expiration

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of the license for the facility, it will promulgate a rule providing that the safety and environmental implications of radioactive waste remaining on site after the anticipated expiration of the facility licenses involved need not be considered in individual facility licensing proceedings.

In the event the Commission determines that on-site storage after license expiration may be necessary or appropriate, it will issue a proposed rule providing how that question will be addressed.

DATES:

Notices of intent to participate must be filed by 30 days after publication of this notice. Other deadlines are described below.

FOR FURTHER  
INFORMATION  
CONTACT:

Stephen S. Ostrach, Office of the General Counsel,  
U.S. Nuclear Regulatory Commission, Washington,  
DC, 20555. (202) 634-3224.

SUPPLEMENTARY  
INFORMATION

Background

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On May 23, 1979 the United States Court of Appeals for the District of Columbia Circuit remanded two licensing actions to the Commission to consider whether an off-site storage solution for nuclear wastes will be available by the years 2007-09, the expiration dates of the licenses of the Vermont Yankee and Prairie Island nuclear plants to which the Commission had granted permits to increase the

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on-site waste storage facilities, and, if not, whether that waste can be stored at the sites past those dates and until an off-site solution is available. In response to the D.C. Circuit's decision the Commission has decided to undertake a generic reconsideration of the radioactive waste question so that it can: (1) reassess its confidence that safe off-site disposal of radioactive waste from licensed facilities will be available; (2) determine when any such disposal or off-site storage will be available; and (3) if disposal or off-site storage will not be available until after the expiration of the licenses of certain nuclear facilities, determine whether the wastes generated by those facilities can be safely stored on-site until such disposal is available. Previously, in connection with a petition for rulemaking filed by the Natural Resources Defense Council the Commission considered the related question of the likelihood that waste disposal will be accomplished safely, and at that time it found reasonable assurance that methods of safe permanent disposal of high-level waste would be available when they were needed. 42 F.R. 34391, 34393 (July 5, 1977), pet. for rev. dismissed sub nom. NRDC v. NRC, 582 F.2d 166 (2nd Cir. 1978). However, in denying the NRDC

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petition, the Commission announced its intent to reassess this finding periodically. This new proceeding will offer an opportunity for the Commission to reassess its earlier finding, to obtain wider public participation in its decision and also to take account of new data and recent developments in the federal waste management plan, most notably the Report to the President by the Interagency Review Group on Waste Management, TID-29442 (March, 1979) (the "IRG Report").

#### Purpose of Proceeding

The purpose of this proceeding is solely to assess generically the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal or off-site storage will be available, and to determine whether radioactive wastes can be safely stored on-site past the expiration of existing facility licenses until off-site disposal or storage is available. In addition to information submitted by public participants and government agencies, this proceeding will draw upon the record compiled in the Commission's recently concluded rulemaking on the environmental impacts of the nuclear fuel cycle (44 FR 45362-74 (August 2, 1979)), and the record compiled herein will be available for use in the general fuel cycle rule

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update discussed in that rulemaking. However, this proceeding is not designed to reach quantitative conclusions about waste repository impacts or performance. The Commission will consider economic issues in this proceeding in the same fashion such issues were considered in the recent fuel cycle rulemaking: namely, a waste disposal model will not be considered realistically available if it would be prohibitively expensive to build and operate such a proposed facility. Cf. 44 FR at 45367.

✓ During this proceeding the safety implications and environmental impacts of radioactive waste storage on-site for the duration of a license will continue to be subjects for adjudication in individual facility licensing proceedings. The Commission has decided, however, that during this proceeding the issues being considered in the rulemaking should not be addressed in individual licensing proceedings. These issues are most appropriately addressed in a generic proceeding of the character here envisaged. Furthermore, the court in the State of Minnesota case by remanding this matter to the Commission but not vacating or revoking the facility licenses involved, has supported the

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Commission's conclusion that licensing practices need not be altered during this proceeding.

However, all licensing proceedings now underway will be subject to whatever final determinations are reached in this proceeding.

If the Commission finds reasonable assurance that safe, off-site disposal for radioactive wastes from licensed facilities will be available prior to expiration of the facilities' licenses, it will promulgate a final rule providing that the environmental and safety implications of continued on-site storage after the termination of licenses need not be considered in individual licensing proceedings. In the event the Commission determines that on-site storage after license expiration may be necessary or appropriate, it will issue a proposed rule providing how that question will be addressed.

#### Procedures

The Commission has chosen to employ hybrid rule-making procedures for conducting this proceeding. Within thirty days after publication of this notice members of the public may file a notice of intent to participate as a "full participant" in the further stages of the proceeding discussed

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below. The notice of intent should set forth the person's or group's identity, technical or other qualifications to participate, tentative positions on the issues to be considered, and a discussion of any special matters or concerns sought to be raised. Furthermore, at that time those members of the public who do not wish to be full participants but who wish to file comments on the issues addressed in this rulemaking should file their comments.

The individuals or groups who have chosen to participate as full participants shall be supervised by a "presiding officer" to be named by the Commission at a later date. That officer's principal responsibility will be to monitor the early stages of the proceeding for the Commission, and to assist the Commission in conducting the later portions. To those ends he or she will have authority to order consolidation of individuals or groups in the same fashion provided in 10 CFR 2.715a. The presiding officer may take appropriate action to avoid delay, including, if necessary, holding pre-hearing conferences or certifying matters to the Commission.

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The Commission's staff will compile a full bibliography on the subjects relevant to the proceeding which will be made available to the public at an early stage of this proceeding. In addition to that bibliography the Commission will maintain a publicly available data bank which will include relevant information on waste storage and disposal. The data bank will include the IRG Report, the background material the IRG collected in preparing the report, the Generic Environmental Impact Statement on Waste Management being prepared by the Department of Energy, and a collection of other principal works that the Commission staff will compile on the subject of radioactive waste storage and disposal. Furthermore, the Commission will solicit the views of a number of federal agencies on the questions involved in this proceeding and on the conclusions of the IRG Report and make the responses of those agencies available in the data bank so that the participants can address them in their papers. The Commission expects that full participants will voluntarily make relevant documents in their possession available to other full participants to the extent practical and will reference and produce on request the documents on which they rely.



The Commission is considering whether additional procedures should be employed. One proposal is to strictly control inter-participant discovery and to provide that requests for interrogatories, depositions or other formal discovery will not be entertained unless the Commission finds compelling justification therefor. If this proposal were adopted, the Commission expects that there would be at most only a few exceptional circumstances in which such justification could be demonstrated. An alternative proposal which is also under consideration would be to apply to this proceeding the discovery procedures set forth in 10 CFR Part 2 and to have any discovery supervised by the presiding officer. Participants or other members of the public who wish to express views on this matter should file those views with their notices of intent or comments which are due 30 days after publication of this notice. In particular participants should discuss whether imposition of the discovery provisions of Part 2 or their absence would be likely to alter their willingness to participate in this rulemaking or to affect the quality of their contribution to the record. The presiding officer will then summarize the views expressed and present his or her recommendations to the Commission. The Commission will issue a prompt decision

on this matter so that the participants' preparation of their statements will not be adversely affected by uncertainty as to the extent of data that may be available to them.

Approximately 30 days after the notices of intent are filed, the officer will issue a prehearing order resolving all preliminary issues including consolidation. Following the prehearing order the participants will have approximately 60 additional days (the exact time to be set in the prehearing order) to prepare and file their statements of position. The statements will be the participants' principal contribution to the waste confidence proceeding, and participants should focus their preparation on them. The statements should set forth the participants' views on the issues discussed above, and on the underlying assumptions and scenarios, both technical and institutional, upon which those views are based. After the statements are filed, the participants will be given approximately 60 days (to be set by the order) to prepare cross-statements discussing statements filed by other participants. The cross-statements should be limited to material discussed in the

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statements and should not be used to introduce new material.

After the statements and cross-statements have been received, the Commission with the assistance of the presiding officer will issue a second pre-hearing order. This order will set out the procedures to be followed for the remainder of the hearing and may provide for further written submissions from the full participants, or for the scheduling of an oral hearing. If the Commission desires oral presentations, the participants may be further consolidated to ensure that the oral presentations will be efficient and useful.

Unless different procedures are set out in the second prehearing order, the hearing will begin with delivery of prepared statements from the representatives, both technical and legal, of the groups into which the participants have been consolidated. These statements should succinctly summarize the participants' views previously set forth in their statements and cross-statements. Participants should ensure that their representatives will be able to address the merits of the legal, technical and institutional issues that have been raised in this proceeding. After the prepared

remarks the speakers will be questioned by the members of the Commission. Furthermore, other participants will be given the opportunity to submit written questions to the Commission for it, in its discretion, to ask of participants.


The Commission reserves the option of providing a final stage at which representatives of the participants may be cross-examined by other participants. The Commission will defer deciding whether to permit any cross-examination until after the hearing is over. To obtain cross-examination a participant will be required to identify the issue or issues as to which cross-examination is sought, and the representative or participant involved, and to demonstrate that cross-examination is necessary to prepare a record adequate for a sound decision.

Based on the material received in this proceeding and on any other relevant information properly available to it, the Commission will publish a proposed or final rule in the Federal Register. Any such final rule will be effective thirty days after publication.

Comments, notices of intent to participate and any other documents filed in this proceeding should be

filed by serving a copy on the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Docketing and Service Branch. All filings will be available for public inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

For the Commission

  
Samuel J. Chalk  
Secretary of the Commission

Dated: October 18, 1979

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COMPARISON OF ESTIMATED SCHEDULE FOR RULEMAKING TO ASSESS COMMISSION CONFIDENCE WITH SCHEDULE FOR S-3 AND ACCESS RULE PROCEEDING

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FEDERAL REGISTER NOTICE

	Public Comments and Notices of Intent	First Pre-hearing Conference Order	Statements of Position	Cross Statements	Second Prehearing Order and Preparation for Hearing	Hearing	Review Record and Write Rule	Rule Effective Liveness
WASTE CONFIDENCE PROCEEDING	30 days	30 days	60 days	60 days	90 days	10 days	180 days	30-60 days
S-3	Prehearing Activities	Prepare Testimony	Written Questions	Hearing	Cross-ex requests Completion of record	Review of record Preparation of decision		
	83 days	40 days	31 days	74 days (10 actual hearing days)	86 days	120 days		
CLEARANCE ACCESS RULE	Prehearing Activities	Prepare Testimony, Questions, Responses	Hearing	Cross-ex Requests Completion of Record	Review of Record - Preparation of Decision			
	120 days	74 days	2 days	70 days	160 days			

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

*Rosenman*

In The Matter Of

MINNESOTA v. NUCLEAR REGULATORY COMMISSION

NATURAL RESOURCES DEFENSE COUNCIL REQUEST  
FOR IMPLEMENTATION OF COURT DECISION

Introduction

In order to implement the Court's decision in Minnesota v. Nuclear Regulatory Commission, the Commission must first decide what is the holding of that case. In our judgment, the holding is clear. It affirms the decision of the Appeal Board in ALAB-455 which found that whether nuclear wastes can be safely stored is a relevant inquiry in licensing nuclear facilities. The Court further found that there has not been an NRC determination in generic proceedings sufficient to answer the following question (Slip Op., p. 14):

. . . whether there is reasonable assurance that an off-site storage solution will be available by the years 2007-09, the expiration of the plants' operating licenses, and if not, whether there is reasonable assurance that the fuel can be stored safely at the sites beyond those dates.

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It is critical for understanding the ramifications of the decision to acknowledge that the Court found that a finding on safe disposal of nuclear waste finding and that there was not ye

DUPLICATE DOCUMENT

Entire document previously entered into system under:

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No. of pages: 5