

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

COMMISSIONERS:

John F. Ahearne, Chairman
Victor Gilinsky
Richard T. Kennedy
Joseph M. Hendrie
Peter A. Bradford



In the Matter of

PROPOSED RULEMAKING ON THE STORAGE AND
DISPOSAL OF NUCLEAR WASTE

(Waste Confidence Rulemaking)

PR-50, -51
(44 Fed. Reg. 61372)

MEMORANDUM AND ORDER

In the period following issuance of the Presiding Officer's Prehearing Conference Order on February 1, 1980, the Commission received two motions from participants requesting that the NRC staff be assigned an explicit role with regard to assuring the development of an adequate record in this proceeding. The Natural Resources Defense Council (NRDC) in a motion dated February 14, 1980, contended that the Commission cannot be assured of a complete record in this proceeding unless the staff solicits the views of technical experts. ^{1/} The California Energy Commission (CEC) in a motion dated February 20, 1980, suggested that the staff should actively seek out a broad spectrum of views by empaneling a body of

^{1/} This motion was supported by the States of Wisconsin, Ohio, Illinois, and New Hampshire. It is opposed by the Utility Waste Management Group and the Edison Electric Institute.

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experts to mediate the technical issues presented by this rulemaking. 2/

The Commission has directed its Office of Policy Evaluation to form a working group to advise the Commission regarding the adequacy of the record to be compiled in this proceeding. The working group is composed of personnel from the Offices of Policy Evaluation, the General Counsel and the Executive Legal Director, and is provided with technical support by the program offices of Nuclear Materials Safety and Safeguards, Research, and Standards Development. 3/ The working group will review the participants' submissions and, after the cross-statements are filed, will identify issues in controversy and any areas in which additional information is needed. Depending upon the procedures adopted at that point, the working group will assist in obtaining this further information by: (1) preparing questions to be asked of participants by the Presiding Officer or the Commission; or (2) suggesting methods of obtaining this information by other means, including soliciting information from other sources.

2/ CEC also suggested that the Commission or a committee composed of at least two Commissioners should conduct this proceeding. As the Presiding Officer noted in his Order of February 1, 1980, the Commission carefully considered the procedure it wished to follow and decided to employ hybrid rulemaking procedures and to designate a Presiding Officer who will monitor the early stages of the proceeding and assist the Commission in conducting the later stages of the proceeding. We believe that it would be premature at this preliminary stage of the proceeding to determine what procedures would be appropriate for the later stages of this proceeding. Accordingly, after the cross-statements are filed, CEC may again present this suggestion if it believes that this procedure would be appropriate for conducting the next stage of this proceeding.

3/ The working group may also engage the services of outside experts if it determines that such consultation is needed.

Following the last phase of the hearing, the working group will prepare a summary of the record, identify the key issues and controversies, and indicate how their resolution could affect the Commission's decision. In addition, the Presiding Officer may at any time during the proceeding identify areas in which the working group could provide assistance. The Commission will consider the Presiding Officer's requests and may suitably modify the extent of the working group's participation.

The Commission believes that at the present stage of the proceeding the establishment of this working group adequately addresses the concerns expressed in the motions referred to above. Many issues may be resolved by the participants' position papers and cross-statements, thus obviating the need for additional expert opinions on those issues. Accordingly, the Commission believes it would be premature to solicit expert opinion at this time. After these documents have been filed, the working group will be able to identify the important and controversial issues and then to determine whether the special participation by experts as urged by NRDC and CEC would materially clarify particular issues or disputed evidence. 4/

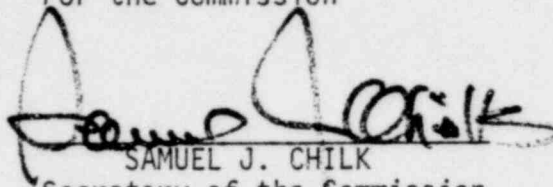
Insofar as the NRDC and CEC motions request Commission action other than that described in this Memorandum and Order, those motions are denied.

Commissioner Bradford would have preferred that the staff views on the substantive issues be subject to public scrutiny. He also would have preferred that the Commission undertake the service of all filings in this case.

4/ To a large extent, the nature of participation by non-participant experts, should it be found necessary, will be determined by the issues they would address. Thus, CEC's suggestion for technical mediation is also premature at this time.

It is so ORDERED.

For the Commission

A handwritten signature in black ink, appearing to read "Samuel J. Chilk". The signature is written in a cursive style with a large initial "S" and "C".

SAMUEL J. CHILK
Secretary of the Commission

Dated at Washington, D.C.,
this 28th day of May, 1980.