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(44FR 70408)

March 4, 1980

*NOT ADMITTED IN D.C.

Secretary of the Commission
U. S. Nuclear Regulatory Commission
Washington, D. C. 20555

Attention: Docketing and Service Branch

Re: Proposed Licensing Procedures for
Disposal of High-Level Radioactive
Wastes in Geologic Repositories



Gentlemen:

On December 6, 1979, the Nuclear Regulatory Commission published for comment proposed regulations relating to the licensing procedures for the disposal of high-level radioactive wastes in geologic repositories. (44 Fed. Reg. 70408). The Federal Register notice invited comments on the proposal. On behalf of the Radioactive Waste Management Group, we are pleased to submit the comments which follow. The Radioactive Waste Management Group is composed of utilities who are operating, constructing and planning nuclear power reactors. The members of the Group are American Electric Power Company, Baltimore Gas and Electric Company, Duquesne Light Company, General Public Utilities Corporation (and its subsidiaries Jersey Central Power & Light Company and Metropolitan Edison Company), Kansas City Power & Light Company, Kansas Gas and Electric Company, Madison Gas and Electric Company, Northern States Power Company, Ohio Edison Company, Pennsylvania Power & Light Company, Rochester Gas and Electric Company, The Cleveland Electric Illuminating Company, Toledo Edison Company, Union Electric Company, Wisconsin Electric Power Company, Wisconsin Power & Light Company, and Wisconsin Public Service Corporation.

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The proposed regulations supersede the proposed General Statement of Policy on Licensing Procedures for Geologic Repositories for High-Level Radioactive Wastes (43 Fed. Reg. 53869, November 17, 1978). Comments filed on January 16, 1979 by the Radioactive Waste Management Group on the proposed General Statement of Policy commended the Commission for its diligent attempt to devise procedures which would meet the goals of maximizing public confidence while at the same time proceeding in an expeditious fashion with the waste management program. We did however recommend a number of changes in the proposed General Statement. We are pleased to note that some of these changes are reflected in the proposed regulations. Other problem areas however remain and new ones have been created. The following comments address our main areas of concern.

1. Alternative Sites

Both in the proposed regulations (see, e.g. proposed §51.40(d)) and in the Supplementary Information accompanying the proposal (see, e.g. 44 Fed. Reg. at 70411), the Commission states that "to satisfy the requirements of NEPA", it anticipates that there will be site characterization for "a minimum of three sites representing a minimum of two geologic media." The Commission also proposes that this multiple site characterization must be substantially completed before NRC will act on an application for construction authorization. We find no such requirement in NEPA and respectfully submit that NRC should not prejudge the nature or magnitude of the alternatives analysis which may be appropriate.

The current program of the Department of Energy is looking towards examination of a variety of sites in a variety of media. The President's February 12, 1980 policy statement on radioactive waste management codifies this approach.

Immediate attention will focus on research and development, and on locating and characterizing a number of potential repository sites in a variety of different geologic environments with diverse rock types. When four or five sites have been evaluated and found potentially suitable, one or more will be selected for further development as a licensed full-scale repository.

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However, the Commission's proposal appears to go beyond the President's program and will likely cause significant delays in the program with little offsetting benefits. We would make a number of points in this regard.

First, it is our opinion that NEPA does not require multiple site characterization of the type contemplated by the Commission. It must be borne in mind that "site characterization" in the context of the proposed regulations is an elaborate, time consuming process including

borings, surface excavations, excavation of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing. . .

Proposed §60.2(n). In other contexts, NRC has recognized that different levels of information may be available for alternatives and that the level of information which would be developed from a "site characterization" type process is not required for an alternatives analysis which meets NEPA requirements. This differing level of information was indeed the basis for the "obviously superior" standard developed in the Seabrook line of cases. See New England Coalition on Nuclear Power v. USNRC, 582 F.2d 87 (1st Cir. 1978) (recognizing the fact that "the proposed site will inevitably have been subjected to far closer scrutiny than any alternative site. . . ."). Thus NEPA does not mandate that all alternatives studied be studied in the same detail.

Second, the Commission appears to require a higher level of site information on alternates than does the President's statement. The President's statement called for a finding of the potential suitability of four to five sites. This type of determination would not necessarily involve the high degree of data contemplated by the site characterization process with its requirements for exploration at depth of every site.

Third, the Commission underestimates the cost of the site characterization. A figure of \$20 million for a generic hypothetical site is presented. 44 Fed. Reg. at 70410. No basis for this cost is given. Even at this cost, the Commission is calling for expenditures in the neighborhood of \$100 million (since NRC expects DOE to present "a wider range of alternatives" than the three site minimum, 44 Fed. Reg. at 70411). Also, it is our opinion that the \$20 million

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figure is too low. We note that DOE has proposed to spend \$21 million in Fiscal Year 1981 alone on "further site characterization and protection of the site" near Carlsbad, New Mexico, even though the Carlsbad site has been under study for many years.

Fourth, we are concerned that NRC is establishing perfection as the standard for siting decisions, rather than as a goal. Thus, NRC indicates its intent that DOE present the Commission with "a slate of candidate sites that are among the best that reasonably can be found." 44 Fed. Reg. 70410. The appropriate standard should be the selection of a site, chosen from among reasonable alternatives, which meets NRC's technical criteria. In determining the reasonableness of the alternatives, the NRC is entitled to -- and should -- consider the delay factor which could result from awaiting the discovery of the "best" sites. See Porter County Chapter of Izaak Walton League v. AEC, 533 F.2d 1011, 1017 (7th Cir.), cert. den. 429 U.S. 945 (1976).

2. NEPA Compliance

In our comments on the proposed General Statement of Policy, we urged that NRC in its NEPA review not reopen important generic issues treated by DOE. The Supplemental Information accompanying the proposed regulations states

The proposed regulations do not explicitly address the NEPA responsibilities of the Commission regarding matters within the scope of the Department's generic environmental impact statement on the management of commercially generated radioactive wastes. The possibility of adopting the Department's statement may be considered by the Commission, as suggested in comments, at an appropriate time.

44 Fed. Reg. at 70408. We continue to urge that the Commission make use of the "tiering", "lead agency" or "joint lead agency" concepts codified in the Council on Environmental Quality regulations to assure that NRC will not unnecessarily duplicate DOE's efforts.

Multiple levels of review are already built into generic decisionmaking on waste management (i.e., DOE, Interagency Review Group, the President, Congress, the State

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Planning Council, and individual states). Yet another layer of review (NRC's reexamination of generic decisions in the course of NEPA process) will add little except the opportunity for delay. Questions involving the timing of repository development, regional siting, the scope and future of the commercial nuclear program, and the like ought to be excluded from NRC NEPA analyses based upon their consideration in DOE NEPA reviews. Similarly, disposal technologies other than mined geologic repositories ought not to be considered by the Commission since those alternatives are not likely to be available in the foreseeable future. 44 Fed. Reg. at 70411. The scope of NRC's NEPA responsibilities should be clearly delineated in advance. This will avoid needless arguments at later stages of the process.

3. Site Characterization Review

Our comments on the proposed General Statement of Policy supported the concept of informal NRC-DOE interaction in advance of formal licensing. The proposed regulations have expanded this informal mechanism considerably. We still believe that interagency consultation at an early stage is important. We would express a concern that the process not be made unnecessarily rigid and overproceduralized.

Proposed §60.11 would require DOE to submit a site characterization report "[a]s early as possible after commencement of planning for a particular geologic repository operations area, and prior to site characterization. . . ." Since activities which NRC might consider "site characterization" have already been carried out at some potential repository sites (such as Carlsbad, New Mexico) and may be carried out at others before the proposed regulations are adopted, the proposed regulation should reflect this fact.

The proposed scope of the site characterization report could also be usefully narrowed in some areas without compromising its purpose. For instance, section 60.11(a) calls for the report to include the identification and location of alternative media and sites on which DOE intends to conduct site characterization for which DOE anticipates submitting subsequent site characterization reports. This would seem to unnecessarily delay DOE from submitting a site characterization report for one site until it had identified all other alternate sites which it wanted to characterize. The process could lead to a "convoy" system where the slowest

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paced site governs the timing for every other site. This is of particular concern in the context of the proposed regulations because of their prohibition on the conduct of site characterization activities prior to Staff review. It is not clear why information on alternative sites is relevant at the site characterization stage. Research and development on waste forms, another item required to be included in the site characterization report, would also seem to be of relatively minor relevance at the site characterization stage.

Two minor comments on site characterization are also appropriate. First, a maximum time period (perhaps 90 days) should be provided for comments on the draft site characterization analysis, in addition to the minimum comment period of 60 days specified in §60.11(e). Second, §60.11(f) should provide that any objections by the Staff on the site characterization report do not affect the authority of the Commission, Appeal Boards, Licensing Boards, etc. This would provide the necessary symmetry to the provision in §60.11(f) that a "no objection" finding does not affect the authority of the Commission.

4. Scope of information for license application

Proposed Section 60.21 describes the information to be included in the application for construction authorization. In general, the regulations do not explicitly reflect the preliminary nature of some of the information which will be available. In some cases, the information requested seems to be overly detailed for a preconstruction stage.

In the reactor licensing context, 10 CFR §50.34(a) acknowledges that the construction permit application may contain "preliminary" information. Thus the preliminary safety analysis report may include the "preliminary design of the facility", §50.34(a)(3), a "preliminary analysis and evaluation of the design and performance of structures, systems and components", §50.34(a)(4), a "preliminary plan for the applicant's organization", §50.34(a)(6), and a discussion of "preliminary plans for coping with emergencies", §50.34(a)(10). Proposed Part 60 does not contain comparable language. Indeed, the language of §60.24(a) that the application be "as complete as possible in light of information that is reasonably available at the time of submission" could be read to imply the need to go beyond the preliminary information more typical of the pre-construction stage. Some of the requested categories of information in §60.21

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would not seem necessary, at least in full detail, at the construction authorization stage. These include emergency plans, §60.21(c)(9), nuclear material accounting and control, §60.21(c)(10), retrieval plans and alternate storage, §60.21(c)(11), organization, §60.14(c)(i), and decommissioning, §60.21(c)(14)(vii). We would also recommend that the findings to be made by the NRC in issuing a construction authorization, described in §60.31, be tailored to the preliminary nature of information in these areas.

5. Other comments

In addition to these major areas of comment, we would like to point out several other provisions where changes should be made.

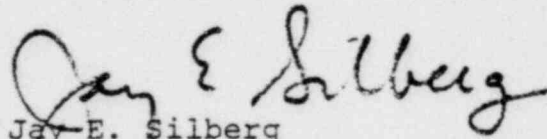
- a. §60.2(i): Spent fuel should be characterized as "high-level radioactive waste" only where the determination has been made to permanently dispose of the specific spent fuel assemblies. This will avoid disputes as to whether spent fuel is "radioactive waste" under circumstances where permanent disposal is not intended.
- b. §60.21(a): The proposed regulation should allow DOE to submit a site specific environmental impact statement, if one has been prepared, in place of the environmental report now called for. (This comment would of course not apply if the more fundamental NEPA-related changes discussed above are made).
- c. §§60.33(b) and 60.45(b): These provisions, dealing with amendments to construction authorizations and licenses, should incorporate the "significant hazards" language for pre-noticing now found in the analogous Part 50 provision, §50.91.
- d. §60.43(b): The proposed regulation would require that license conditions cover "restrictions as to location, size, configuration and physical characteristics . . . of the storage medium". These would seem to be governed by the nature of the site selected. Thus, license conditions would be unnecessary.

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- e. §60.71(c): The reporting requirement for deficiencies should specify the timing of such reports. Presumably the timing could parallel that established in 10 CFR §50.55(e).

We appreciate the opportunity to submit these comments.

Very truly yours,



Jay E. Silberg
Counsel for the Radioactive
Waste Management Group