

SD-901-1

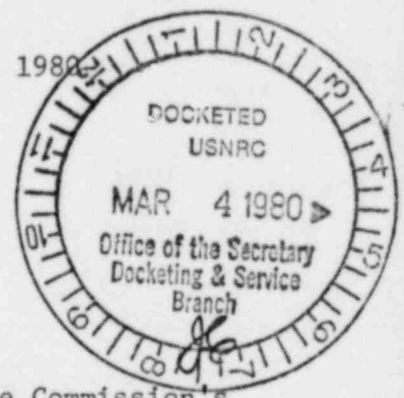


by Ansel Adams in *This is the American Earth*

DOCKET NUMBER ⁹
PROPOSED RULE PR-2222
SIERRA CLUB (44 FR 70408)

330 Pennsylvania Avenue, S.E.
Washington, D.C. 20003
(202) 547-1141

March 3, 1980



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

Attention: Docketing and Service Branch

The Sierra Club appreciates this opportunity to comment on the Commission's Proposed Rule on Disposal of High Level Radioactive Wastes in Geologic Repositories: Proposed Licensing Procedures (44 F.R. 70408, December 6, 1980).

The Sierra Club endorses many of the principles in the Proposed Rule, many of which have been supported by the Final Report of the Interagency Review Group on Nuclear Waste Management and in President Carter's February 12, 1980 Policy Statement on Nuclear Waste Management. However, we do differ with a number of the provisions of the Proposed Rule. The comments below are limited to several of these key provisions. However, our interests and concerns are not necessarily limited to those sections specifically addressed below.

Before addressing specific provisions in the Proposed Rule, we must discuss the underlying assumption that the Nuclear Regulatory Commission should retain the legal authority to license and otherwise regulate the geologic disposal program. This is assumed, of course, by the Interagency Review Group and President Carter.

There is no question that the geologic disposal program should be regulated by a federal agency other than the Department of Energy, which is responsible for conducting the program. However, the Sierra Club does not believe that, barring fundamental changes at the Commission, the Commission can counted on to perform this important function.

We believe that the Commission, both as an institution and in the case of the majority of its personnel, is biased in favor of the nuclear power industry. This pro-industry inclination has been noted recently by the President's Commission on the Accident at Three Mile Island. The Commission's Report stated:

...we have seen evidence that some of the old promotional philosophy still influences the regulatory practices of the NRC. While some compromises between the needs of safety

8007030003

Acknowledged by card 3/7/80

and the needs of an industry are inevitable, the evidence suggests that the NRC has sometimes erred on the side of the industry's convenience rather than carrying out its primary mission of assuring safety. (p. 19)

The NRC, the Commission found, "is so preoccupied with the licensing of plants that it has not given primary consideration to overall safety issues." (p. 51), and that "(w)ith its present organization, staff, and attitudes, the NRC is unable to fulfill its responsibility for providing an acceptable level of safety for nuclear power plants." (p. 56) (emphasis added)

The Rogovin Report was also highly critical of the NRC's operations, finding that "(i)n sum, the Nuclear Regulatory Commission has provided neither leadership nor management of the Nation's safety program for commercial nuclear plants." (p. 114)

Largely in response to the evidence of this pro-industry mind set, the President's Commission recommended a major restructuring of the NRC, including the establishment of an oversight committee on nuclear reactor safety, to be appointed by the President, to examine the performance of the NRC and the industry in addressing nuclear power plant safety issues and "in exploring the overall risks of nuclear power." (Recommendation No. 2)

The second reason for our concern is that the growing uncertainties regarding nuclear waste management, including the absence of an approved geologic repository, are beginning to have significant adverse political and economic consequences for the nuclear industry and the future of the nuclear power program. Representatives of the nuclear power industry have publicly identified the nuclear waste issue as being as great a threat to the nuclear power program as the Three Mile Island accident and power plant safety questions. Moreover, legislation now before the Congress would require a phase-out of the nuclear power program unless specific "solutions" to the nuclear waste crisis are achieved by certain dates.

In the area of nuclear power plant regulation, the President's Commission found that the pro-industry bias of the Commission resulted in at least some actions designed for the protection of the industry, at the expense of public safety concerns. Neither the President's Commission nor the Rogovin Report investigated the nuclear waste regulation role of the NRC. Unfortunately, we find no substantial reasons to believe that the NRC's pro-industry bias will not also prejudice the Commission in its regulation of nuclear waste management activities, including the Department of Energy's geologic disposal program.

The NRC has not demonstrated any intention to regulate the geologic disposal program with the resolve to be expected of the regulating agency. The weaknesses of this Proposed Rule, as discussed below, unfortunately, are further testimony to the Commission's unwillingness to cast aside its past prejudices and to demonstrate the political courage requisite to a successful geologic disposal program.

The safe management and disposal of high level wastes, transuranic wastes, and spent fuel, are necessary to protect the public health and safety and natural support systems, both now and for generations to come. We must ensure that the regulators of the nuclear waste management program will strive only to provide for the safest possible disposal of these wastes, and will not be influenced by concerns for the well being of the nuclear power industry. Therefore, we must conclude that, barring a radical change in its attitudes and its operations, the NRC should not remain responsible for regulating the geologic disposal program. We recommend that, absent rapid, major shifts in the the Commission's attitudes and functioning, the Commission's licensing authority over the DOE geologic disposal program be transferred to a new independent commission in the federal executive branch whose sole responsibility is the regulation of nuclear waste activities and programs including, but not necessarily limited to, geologic disposal.

Notwithstanding the above comments, we welcome the opportunity to comment on this Proposed Rule. Adoption of these and similar suggestions by other interested persons could, of course, constitute the major shifts we believe are necessary in the NRC program. We endorse, in principle, the majority of the licensing procedures outlined in the Federal Register discussion preceeding the Proposed Rule. (Assuming, of course, that the NRC retains its licensing authority.) However, the Proposed Rule would fail to implement adequately several of the most important of these principles.

(1) The Proposed Rule should expressly require the Department of Energy to characterize fully several sites in a variety of different geologic media as a prerequisite to applying for a license under Section 60.21. The Federal Register discussion preceeding the Proposed Rule stresses repeatedly the value of characterizing several potentially acceptable sites in a variety of geologic media. Moreover, it is assumed that DOE will conduct such a program. (See "Departure From the General Statement of Policy" at 70409, "Site Characterization Review" at 70409, "Provision for Characterizing Several Sites" at 70409-10, and "Procedures" at 70411.) This requirement was also stressed in President Carter's February 12, 1980 Policy Statement. Yet neither Section 60.21 nor any other section requires multiple site characterizations prior to DOE's application for a license.

(2) The standard to be applied in deciding whether to authorize construction of a geologic repository is entirely too weak. (Section 60.31) The required "Safety" finding (Swction 60.31(a)) is merely that there be a "reasonable assurance" that the types and amounts of wastes in the application "can be received, possessed, and disposed of in a repository of the design proposed without unreasonable risk to the health and safety of the public." This finding is entirely too lax.

The purported "Environmental" finding (Section 60.31(c)) is not even an environmental finding. Rather, it is a balancing test which could allow a construction authorization for a repository with recognized catastrophic potential environmental effects. Indeed, this finding is so vague as to be of virtually no value to the Commission or other interested parties.

Similarly, the suggested "Common defense and security" finding (Section 60.31(b)) is so vague as to be of no consequence.

This Section should include a "best available site" standard, in addition to stricter versions of the "Safety," "Common defense and security," and "Environmental" standards currently in the Section.

The laxness of the Commission's standards is further evidenced in the "Other Reviews" discussion preceding the Proposed Rule, describing the Commission's hope that the DOE site screening process will lead merely to "a slate of characterized sites whose members are among the best that reasonably can be found." (at 70412)(emphasis added)

(3) Similarly, the standards for issuance of a license under Section 60.41 are entirely too weak. Among other things, the test in subsection (c) should be strengthened substantially.

(4) Section 60.11 should require formal public hearings prior to site characterization. The value of these hearings is touched upon in the "Site Characterization and Authorization of Construction" discussion (at 70410-11) and the "Site Characterization Review" discussion (at 70409). The reasons given for rejecting these hearings are not sufficiently strong to outweigh the hearings' merits. We find it difficult to comprehend the Commission's reasoning that "any decision on alternative sites issues at this early point is likely to require reexamination at the construction authorization proceedings and, therefore, would be of questionable value," given that the Proposed Rule does not require the characterization of alternate sites. (at 70410) Moreover, the Commission's finding that the hearing process "can be an inefficient and cumbersome means of arriving at decisions" (at 70410) should be outweighed by the importance of the issues and the Commission's own recognition that "it would be possible for the Commission to structure its proceedings so as to provide for formal hearings on limited issues at an early stage in the process," and that "(t)he hearing process has clear advantages as a mechanism for fact finding." (at 70410)

(5) The Proposed Rule should also require formal proceedings for public consideration of DOE's waste form research and development program. The Proposed Rule should contain other action-enforcing provisions enabling the Commission to ensure that the waste form program is sufficient.

(6) The Proposed Rule should establish an intervenor funding program for persons who contribute in a significant fashion to any proceeding which is a part of the regulatory process described in the Proposed Rule. The NRC currently has the power to establish such a program.

(7) The Proposed Rule should provide that the Immediate Effectiveness Rule shall not apply to any official actions of the Commission covered by the Proposed Rule.

(8) The Commission should prepare an environmental impact statement for the Proposed Rule. This would be consistent with the Final Report of the Interagency Review Group on Nuclear Waste Management and President Carter's February 12 Policy Statement, both of which stressed the

importance of NEPA in the nuclear waste management program. (See 70412)

(9) The strictness of the "important to safety" standard applicable to structures, systems and components should be increased significantly. (Section 60.2(j), at 70416)

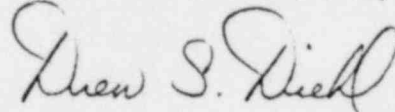
(10) The minimum period for public comments on the draft site characterization analysis should be increased from 60 days to 90 days. (section 60.11(e), at 70416)

(11) Section 60.32 should be strengthened by amending subsection (b) to read: "The Commission shall incorporate provisions requiring..." (at 70419)

(12) Section 60.52, which provides for the termination of a license following the decommissioning of the site, should be eliminated from the Proposed Rule. The issue of license termination is a major policy question requiring further study prior to adoption. Such a provision can always be added to the Commissions's Rules at a future date.

This concludes our formal comments on the Proposed Rule. Once again, we appreciate the opportunity to comment on this important proposal.

Respectfully Submitted,



Drew S. Diehl
Washington Representative