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DOCKET NUMBER
PROPOSED RULE PR-2etal
(44FR 70408)

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

Attention: Docketing and Service Branch

The Environmental Policy Institute makes the following comments concerning 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 Environmental Policy Institute endorses, in principle, the licensing procedures outlined in the proposed rule. These new procedures address many of the problems we found with the November, 1978 General Statement of Policy regarding early site activities. Specifically, the Institute endorses the concept, and substance, of the "site characterization" requirement contained in Sec. 60.11 of the proposed rule. We also agree with the proposed series of licensing steps: a construction authorization (Sec. 60.31), a repository license (sec. 60.41), a decommissioning amendment (Sec. 60.51) and a license termination review (Sec. 60.52).

The proposed rule is deficient, however, in several key respects and continues to reflect the overly passive approach of the Commission to dealing with the Department of Energy program which we criticized in the 1978 General Statement of Policy.

First, much is made in the Notice of the Commission's intent to require DOE to characterize several sites before construction will be authorized. Nowhere in the rule, however, is there any requirement for multiple characterizations. Such a requirement is most notably absent from Sec. 60.21 "Content of Application" which should explicitly require characterization of multiple sites and the degree to which these characterizations must be described and comparable with one another. Since this section establishes the fundamental requirements for licensing, and since the NRC intends to maintain an "informal" prelicensing relationship with DOE concerning site selection activities, it is essential that a specific multiple site requirement be included in the first "formal" stage outlined in Sec. 60.21.

Second, "Construction Authorization" (Sec. 60.31) is not dependent upon any finding that the best site, to say nothing of the best site

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among those characterized, be selected. While there is a recognition that the construction authorization, as envisioned by the Commission, is a complex process and extends beyond the issue of site suitability, DOE has embarked upon a "systems approach" to repository development wherein the site decision cannot be removed from the other components of a repository development. Similarly, choice of a site represents a fundamental decision in many respects on a repository technology. To omit a "best available site" determination from Sec. 60.31 "Construction Authorization" is a serious flaw especially in light of DOE's penchant for developing sites of convenience on its own reservations.

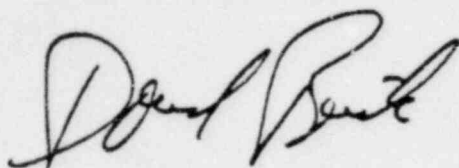
Third, the NRC continues to adopt an overly passive approach to the fundamental issue of technology selection. The Commission has not put any teeth into its licensing procedures that would allow it to cull out inadequate DOE repository technologies either in terms of types of geologic media or waste forms. While the Notice implies that the NRC will, at a minimum, permit DOE to develop only the best of several characterized sites, the proposed rule contains no such requirement. The NRC proposes to oversee the DOE waste form development program, but does not intend to specifically license waste forms. The Commission proposes to oversee the DOE's site selection program, but does not require that DOE in fact even have such a program. Rather, NRC assumes that the sites DOE has chosen to characterize have resulted from a careful and thorough selection process. DOE's interest in the WIPP site at Carlsbad, New Mexico, the Nevada Test Site, and the Hanford Reservation do not reflect site choices based upon a technical site selection process.

The Commission is not, as the Notice points out, licensing nuclear reactors under this proposed rule. It is licensing a completely undeveloped technology in which every repository is a generically new facility. To this end, the NRC licensing process should be based upon a defense-in-depth approach requiring DOE to find and develop the best site, the best waste form, the best repository design. The proposed rule does not establish these minimum requirements.

The "Other Reviews" referred to in the Notice (44 F.R. 70412) concerning site screening and waste form should be formalized. They are not merely programmatic decisions by the DOE but represent critical elements of a waste repository and certainly basic elements of a defense-in-depth approach. The Site Characterization Report preparation should not be defined as an "informal conference between the prospective applicant and the staff" (Sec. 60.11). We cannot agree with the Commission's unqualified assurances that the opportunities for public participation and

staff review provide an acceptable process for review of DOE's site characterization program. NRC's argument that multiple site characterizations would nullify the value of a hearing process is irrelevant given the lack of requirements that such characterizations will in fact occur. We request that the NRC propose procedures under 10CFR Part 2, Subpart F for review of the DOE site characterization report.

Respectfully,

A handwritten signature in black ink, appearing to read "David Berick". The signature is fluid and cursive, with the first name "David" and last name "Berick" clearly distinguishable.

David Berick
Director
Nuclear Waste Project