



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

COMMISSION
CORRESPONDENCE

July 30, 1980

Th Honorable Morris K. Udall, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your request for the Nuclear Regulatory Commission's (NRC) comments on the proposed revision of H.R. 6390 and on H.R. 6116. H.R. 6390 would, among other things, establish procedures for selecting sites and developing permanent repositories for high-level waste. Several aspects of these procedures, including the number of candidate repository sites, diversity of site media, and the Department of Energy (DOE) consultation with the NRC during site characterization, are consistent with the Commission's proposed licensing procedures contained in 10 CFR Part 60. However, as discussed in detail below, several aspects of the proposed procedure for federal/state concurrence are inconsistent with the Commission's previous statements on this matter.

H.R. 6116 would extend NRC's licensing authority to certain facilities established by DOE for the disposal of spent nuclear fuel and transuranic waste. The Commission's views on this bill are contained in the enclosed copy of an April 28, 1980 letter to Chairman Staggers. The Commission supports enactment of H.R. 6116 to the extent that the bill is consistent with the Commission's recommendations contained in the report to Congress entitled "Regulation of Federal Radioactive Waste Activities" (NUREG-0527).

The Commission has the following comments on the concurrence procedures proposed in H.R. 6390, as amended.

I. Site Selection

Regarding federal/state concurrence on a permanent repository, H.R. 6390 would establish a procedure involving the host state, the President, and the Congress.^{1/} DOE would initiate the procedure by recommending a final repository site to the President. 202(d). The President would review DOE's recommendation and approve or disapprove the site. 202(b). If the President disapproves the site, then DOE would have one year to recommend another site to the President. 202(d)(1)(B). There is no limit on the number of sites the President could disapprove, or provision for review of his veto.

^{1/} Indian Tribes on whose reservations sites would be located would have the same capacity as states containing repository sites.

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If the President approves a DOE recommended site and engineering design, the State Review Board established by the State containing the site may petition Congress to disapprove that site. 204(b)(1). A concurrent resolution by Congress would be required to overcome a State petition of disapproval. 206(c)(1). If Congress does not override a State's disapproval, DOE would have one year to submit an alternative recommended site to the President. 202(d)(1)(3). Alternatively, if Congress overrides a State's petition for disapproval, then DOE would submit to NRC an application for construction authorization. 202(d)(2).

This procedure differs in several significant respects from the Commission's previous suggestions in this area. First, regarding the time of possible State nonconcurrence, the Commission has stated that the opportunity for nonconcurrence should be provided after completion of an NRC proceeding on any application for construction authorization. The State decision would thus come before the commitment of funds for facility construction, but after the Commission had fully developed a factual record and reasoned statement of its conclusions that would be available for use in the resolution of any State objections. However, the concurrence procedure provided by H.R. 6390 would precede DOE's application for authorization to begin repository construction. Accordingly, this aspect of the proposed concurrence procedure is inconsistent with Commission policy.

Second, H.R. 6390 does not specify any basis for State nonconcurrence. The Commission has expressed opposition to any State authority which could be used to impose a flat prohibition on a proposed site repository for a high-level waste repository before the characteristics of the site can be ascertained and evaluated. In the Commission's view, such an open-ended grant of authority would be inimical to the rational resolution of the problem of nuclear waste disposal, and could lead to the selection of repository sites on the basis of their political acceptability rather than their technical soundness. Accordingly, the Commission believes that the site approval and repository development process should be suspended pending review of the record by Congress, the President, or both, only if a State were to continue to object after careful examination of the record on health, safety and environmental considerations, after consultation with DOE, and after participation in the NRC licensing proceedings.

Third, Presidential approval of a proposed site or Congressional override of State objections could unduly influence the Commission's decision regarding the licensability of a proposed repository. The bill would have a proposal submitted to the NRC after several years of DOE development of both the site and the engineering design, completion of an EIS, approval by the Secretary of Energy, review and approval by the President, and, probably, Congressional hearings followed by a positive vote by the Congress. A strong case can be made that the repository would be approved at that point. Such influence might be mitigated by establishing as the criterion for Presidential or Congressional action the determination that a careful review of the record reveals no sufficient reason to prevent the Commission's consideration of the proposed repository. Alternatively, the possible undue influence would be avoided if the federal/state concurrence procedure is timed to begin after the Commission has concluded its proceeding on an application for construction authorization.

Finally, H.R. 6390 would give the President an independent role regarding site suitability by authorizing him to veto a repository site before State action regarding that site. The Department of Energy could not very well go forward with a site unacceptable to the President at any time, so no formal veto is necessary.

For the above reasons, the Commission does not support the State concurrence procedure provisions of H.R. 6390.

II. Site Characterization

H.R. 6390 would provide for Congressional concurrence in DOE's selection of repository sites designated for characterization. DOE would identify and recommend to Congress at least four sites which the Secretary considers suitable for development as licensed commercial repositories. 202(a)(1). Congress would then have 90 days to disapprove (by concurrent resolution) the designation of a site for characterization. 206(a). Such Congressional review of sites for characterization has not been presented previously for Commission comment. However, we do not at present see any obvious problems with this provision in terms of the NRC regulatory role.

In addition, the Commission has the following comments on specific provisions of H.R. 6390.

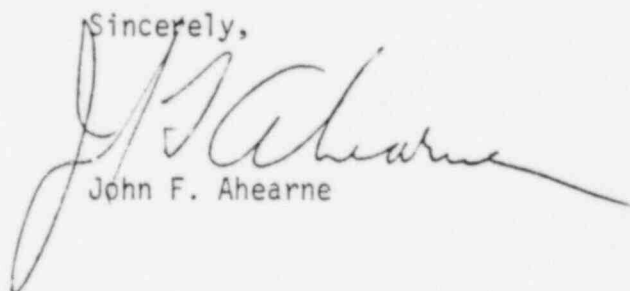
1. Section 202(b) would authorize the Secretary of Energy to issue guidelines containing criteria for eliminating potential repository sites from further consideration. (The Secretary can, of course, eliminate sites from further consideration under current law.) These guidelines would be issued after consultation with the Council on Environmental Quality, the Environmental Protection Agency, the Nuclear Regulatory Commission, and the United States Geological Survey. Among the elimination criteria for a site are association with valuable natural resources, proximity to populations, hydrogeophysics, and seismic activity. Such criteria are already included in the NRC's proposed rule 10 CFR Part 60 - Technical Criteria for Regulating Geologic Disposal of High-Level Radioactive Wastes. This proposed rule is part of and consistent with the entire regulatory system the NRC is now developing for high-level waste repositories. The Commission sees nothing wrong with DOE developing a set of guidelines for eliminating sites as long as it is recognized that NRC too will have a set of such guidelines and that acceptability to DOE does not necessarily mean acceptability to NRC. In addition, there is nothing wrong with DOE using more restrictive criteria than NRC.

2. Section 202(c)(2) would permit site characterization tests to use up to 40 canisters of high-level waste or 180 spent fuel assemblies. The Commission believes that these limits are much higher than necessary for adequate site characterization by an integrated program using radioactive material and electric heaters. The NRC staff believes that one kilogram of transuranic waste or the equivalent of ten metric tons of spent fuel should be adequate for site characterization purposes. Utilization of larger amounts of radioactive material could unnecessarily increase the cost of site characterization and present health and safety questions which would divert attention from site characterization activities.

3. Section 202(c)(3) would authorize the Commission to order the Secretary to discontinue site characterization activities at any site the Commission finds unsuitable for eventual development as a repository. This provision raises several procedural problems. First, no procedure is provided for resolving disagreements between NRC and DOE. Second, such action by the Commission might require a hearing under Section 189 of the Atomic Energy Act of 1954, as amended. Finally, 10 CFR 2.206 could provide members of the public a basis for petitioning the Commission to take such action. Such petitions could involve the Commission in several proceedings on site suitability. Accordingly, the Commission believes this section should be amended to be consistent with NRC's proposed procedural rule under which NRC would informally consult with DOE during the site characterization phase of repository development.
4. Section 202(d)(1)(B) would authorize the Secretary to propose an alternative repository site within one year of disapproval of an initial proposal. In view of the potential limit on acceptable repository sites, the Secretary should also be authorized to present an amended recommendation regarding a proposed site.
5. Section 203(a) would require the NRC to promulgate repository licensing regulations by January 31, 1981. This deadline would not provide adequate time for the development of the technically complex regulations which are necessary in this area. NRC expects to promulgate a final rule for the procedural and technical regulation of waste repository licensing by January 31, 1982.
6. Section 204(a) provides for the establishment of a State Review Board in any State containing a site the Secretary recommends for characterization or as the site for a permanent repository. Section 204(e) provides for participation in NRC licensing proceedings by a State Review Board constituted by a State adjacent to a State containing a repository site. The Commission recommends that the apparent inconsistency between Section 204(a) and Section 204(e) be resolved.

I hope these comments will be helpful. The Commission would be happy to provide any further comments or information you might require.

Sincerely,



John F. Ahearne

Enclosure:
Ltr to Chairman Staggers
dtd 4/28/80

cc: Rep. Steven Symms



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

April 28, 1980

The Honorable Harley O. Staggers *
Chairman, Committee on Interstate
and Foreign Commerce
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in reply to your request for the Nuclear Regulatory Commission's (NRC) comments on H.R. 6116, a bill which would extend NRC licensing authority to certain facilities established by the Department of Energy (DOE) for the disposal of spent nuclear fuel and transuranic waste. The bill would also establish criteria for characterizing waste facilities used for research and development activities. In a report to Congress entitled "Regulation of Federal Radioactive Waste Activities" (NUREG-0527) the Commission recommended that NRC licensing authority should be extended to cover all new DOE facilities for disposal of transuranic waste and non-defense low-level waste. The Commission also recommended that a pilot program, focused on a few specific non-defense DOE waste management activities, should be established to test the feasibility of extending NRC regulatory authority on a consultative basis to DOE waste management activities not covered by NRC's present licensing authority or the proposed extension of it. In addition, although the Commission believes it already has authority to license DOE storage of spent fuel, we would welcome explicit legislative affirmation of that authority. To the extent that H.R. 6116 is consistent with the Commission's policy we support its enactment.

The Commission has the following specific comments on H.R. 6116.

Spent Fuel

H.R. 6116 would amend Section 202(3) of the Energy Reorganization Act of 1974 (ERA) to extend NRC licensing authority to DOE facilities used primarily for the receipt and storage of spent nuclear fuel and transuranic waste resulting from activities licensed under the Atomic Energy Act of 1954. On several occasions the Commission has stated its view that spent fuel from licensed power reactors constitutes high-level radioactive waste for the purpose of Section 202(3) of the ERA, but that the NRC would welcome explicit affirmation of its authority to license DOE facilities for storing such spent fuel. Moreover, any DOE storage of foreign spent fuel would present the same considerations of public health and

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safety as the storage of domestic spent fuel. Therefore, the Commission believes it should also be authorized to license DOE facilities for the storage of foreign spent fuel transferred under a subsequent arrangement entered into pursuant to the Nuclear Non-Proliferation Act of 1978. Such licensing authority would be consistent with the President's proposed legislation regarding spent nuclear fuel. Thus, the Commission believes that a consistent policy for protecting public health and safety would require NRC licensing of essentially all DOE facilities for storing commercially generated and foreign spent fuel. Accordingly, the Commission believes that NRC authority to license DOE spent fuel storage should include existing DOE facilities if they are used primarily to store DOE acquired commercially generated or foreign spent fuel. Legislative language which would implement these goals is enclosed.

H.R. 6116 would also amend Section 202(4) of the ERA to extend NRC authority to DOE facilities for the long-term storage of spent nuclear fuel generated by DOE. The Commission supports this provision.

Transuranic Waste

H.R. 6116 would extend NRC licensing authority to certain DOE facilities for the receipt and storage of transuranic waste generated under the Atomic Energy Act of 1954 and to the long-term storage of transuranic waste generated by DOE. The Interagency Review Group on Nuclear Waste Management (IRG) and the President have recommended that NRC authority over transuranic waste should be provided only for new DOE disposal facilities. As noted above, the Commission has made the same recommendation. Any further extension of NRC authority over transuranic waste could involve national security considerations. Therefore, the Commission believes that the proposed extension of its authority in this area is premature and should be re-examined after evaluation of the results of the pilot program recommended by the Commission. Accordingly, the Commission recommends that H.R. 6116 be amended to implement the Commission's recommendation regarding extension of NRC authority to new DOE facilities for the disposal of transuranic waste. Proposed alternative legislative language is enclosed.

Other Considerations

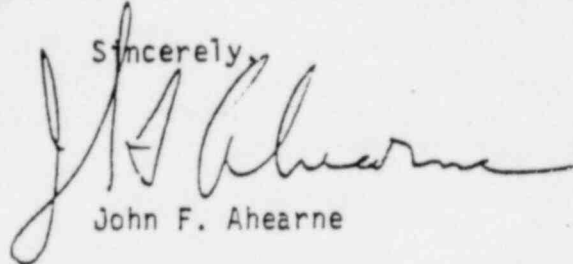
The Commission is neutral regarding the proposed criteria which would characterize research and development facilities for the purposes of Section 202(4) of the ERA.

The Commission recommends that H.R. 6116 should also be amended to include extension of NRC authority over new DOE facilities for the disposal of low-level non-defense waste. Such an extension has been recommended by the IRG and the President. Draft legislative language which would implement this recommendation is enclosed.

Finally, the Commission recommends that Sections 202(3) and 202(4) of the ERA should be amended to refer explicitly to disposal. Although the Commission believes that the legislative history of these sections clearly demonstrates that the term "storage" is intended to include "disposal," */ explicit reference to disposal would remove any ambiguity regarding NRC authority in this regard.

Thank you for this opportunity to provide the Commission's views on these matters.

Sincerely,

A handwritten signature in cursive script, appearing to read "John F. Ahearne".

John F. Ahearne

*/ H.R. Rep. No. 93-1445, 93rd Cong., 2d Sess. (Conf. Rep.) (1974) at 34, S. Rep. No. 93-980, 93rd Cong., 2d Sess. (1974) at 59-60.