

UNITED STATES NUCLEAR REGULATORY COMMISSIONDOCKET NO. 50-289METROPOLITAN EDISON COMPANY, ET AL.NOTICE OF AVAILABILITY OF EMERGENCY PREPAREDNESS EVALUATION FOR TM-1

Notice is hereby given that the Office of Nuclear Reactor Regulation has published NUREG-0746, Emergency Preparedness Evaluation for Three Mile Island Unit 1.

This evaluation describes the licensee's conformance to the requirements of 10 CFR 50.47b and the guidance found in NUREG-0654, Revision 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants".

The Three Mile Island Unit 1 Emergency Plan generally meets the requirements of 10 CFR 50.47b and conforms to the guidance found in NUREG-0654, Revision 1 except for a number of specific items which are identified in the evaluation. The licensee must conduct an emergency preparedness exercise with the State and county governments to show that the Plan can be implemented satisfactorily. A finding on the state of preparedness in the environs around the site is due from the Federal Emergency Management Agency. A supplement to this report will include this finding and will address the other items that currently need resolution.

The report is being made available at the Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555, and at the Government Publications Section, State Library of Pennsylvania, Box 1601 (Education Building), Harrisburg, Pennsylvania, for public inspection and copying. The report (Document No. NUREG-0746) can also be purchased, at current rates, from the National Technical Infor-

sites that are among the best that can reasonably be found. The Commission considers three sites in two geologic media to be the minimum number needed to satisfy NEPA. That is, the Commission can foresee no circumstance that would permit it to conclude, on the basis of a more limited investigation that alternatives have been considered in accordance with the "rule of reason." However, because the "rule of reason" is intrinsically flexible the Commission does not believe that it would be appropriate for ~~[the-rule]~~ these regulations to specify ~~[the]~~ in mandatory terms, the precise number of geologic media and sites that DOE must characterize during multiple site characterization. What is important is that there be sufficient information for NRC to be able to evaluate real alternatives, in a timely manner, in accordance with NEPA. (Information on plans for considering alternative sites is to be included in the Site Characterization Report. This provision was questioned by some commenters. This information is needed so that any deficiency may be the subject of a "specific recommendation" by the Director of the NRC's Office of Nuclear Material Safety and Safeguards, (Director) as provided in §60.11(e), with respect to additional information that might be needed by the Commission in reviewing a license application in accordance with NEPA. The NRC also continues to believe that waste form research is an appropriate topic for treatment in the site characterization report, as the discussion may lead to specific recommendations by the Director, and, as well, contribute to early examination and broader understanding of possible waste form host rock interactions.) Further, wording of §60.11(a) has been changed from "waste form" to "waste form and packaging" to better convey that the NRC was seeking information relating to the interaction of the waste as emplaced (hence including packaging) with the host rock.

In response to one commenter's suggestion that the site characterization report be made to NRC on a site by site basis, §60.11(a) has been revised to require DOE to submit a separate site characterization report for each site to be characterized.

As in the case of facilities licensing matters, ex parte communications would be restricted while on-the-record proceedings are pending. Because a construction authorization (unlike a construction permit) is not a license, its issuance does not constitute a final decision on the pending application. To avoid any unintended implication that the ex parte rule (10 CFR § 2.780) would apply between the construction authorization proceedings and the commencement of formal proceedings prior to receipt of wastes, that rule has been amended to provide specifically that a final decision with respect to issuance of construction authorization will be deemed, unless the Commission orders otherwise, to terminate, for purposes of the ex parte rule, formal proceedings then pending before the NRC with respect to the application.

The rule has also been revised to provide that in cases involving public hearings, the initial decision of the presiding officer shall not be immediately effective. § 2.764. It is further provided that even if no hearing has been held, the Director of Nuclear Material Safety and Safeguards will not issue a construction authorization or license until expressly authorized to do so by the Commission. These changes, while not issued in direct response to commenters' suggestions, reflect sentiments that the fullest opportunity for formal consideration of the issues is in the public interest.

h. Preliminary Nature of the Information to be Included in an Application for Construction Authorization. A number of commenters expressed the

The proposed rule contained provisions which would permit the DOE to include multiple sites in a single site characterization report. In response to public comment, and for the sake of clarity, the final rule requires a separate site characterization report for each site to be characterized.

The Commission reiterates that the site characterization report will be reviewed by the NRC staff with opportunity for public comment on the NRC staff analysis of the DOE site characterization report. DOE has indicated that it will provide opportunity for public comment on its site characterization report prior to submittal to the NRC. Also, the Commission continues to anticipate that it will hold local public [hearings] meetings in the immediate area of the site to be characterized. These meetings will be held both to disseminate information and to obtain public input which will be factored into the final version of the staff analysis.

The period for comment on the NRC's draft site characterization analysis has been extended from a minimum of 60 days to a minimum of 90 days in response to public comment. (§60.11(e))

The provision concerning semiannual progress reports has been expanded so as to provide additional guidance to the DOE on the contents of those reports. (§60.11(g).)

d. Construction Authorization Findings The necessary findings by the Commission on environmental matters (§60.31(c)) have been revised to conform to the language in other portions of the Commission's regulations. Contrary to the views expressed by a commenter, the Commission regards this provision as being fully consistent with the requirements of NEPA.

The Commission has declined to modify the common defense and security finding [as-suggested-by], which one commenter [The-Commission's-review-of-the-history-of-the-Energy-Reorganization-Act-of-1974-indicates-that-NRE's-review-was-deemed-to-be-important-to-protect-the-health-and-safety-of-the-public;-the-Commission-thinks-it-is-appropriate-to-rely-upon-BØE-to-take-action-to-protect-the-common-defense-and-security-inasmuch-as-it-shares-with-NRE-such-responsibilities-under-the-Atomic-Energy-Act:] characterized to be "so vague as to be of no consequence." The proposed "inimicality" findings, §§ 60.31(b) and 60.41(c), reflect the legal standards set forth in the Atomic Energy Act, in particular Section 57c.(2) thereof. Comparable language appears elsewhere in Commission regulations, e.g., 10 CFR §§ 50.57(a)(6) and 70.31(d). With respect to certain activities, however, the Commission requires that a license applicant submit a description of fundamental material controls for the control of and accounting for special nuclear material and also a physical security plan. The present regulations do not require such submissions from the DOE, and the NRC has, therefore, omitted any specific finding that the fundamental material controls or physical security plan are adequate. In so doing, the NRC takes notice of the fact that the DOE is responsible for maintaining common defense and security at installations of the greatest sensitivity. Further, the Department--unlike any other license applicant--shares with NRC responsibilities under the Atomic Energy Act to protect the common defense and security. And, radiation hazards associated with high-level radioactive wastes make them inherently attractive as a target for diversion. The NRC has concluded that the DOE should certify that it will provide "such safeguards as it requires at comparable surface facilities ... to promote the common defense and security," § 60.21(b)(3).

but that details of the safeguards program need neither be obtained nor reviewed in order for the Commission to be able to make the required finding. While this approach contemplates that the Commission would give great weight to the DOE's certification, it does not foreclose the possibility of common defense and security issues being raised and adjudicated in formal proceedings. The provisions of the Energy Reorganization Act calling for Commission review of high-level waste facilities were designed to assure protection of the health and safety of the public and protection of the environment; considering the fact that the legislative history indicates no equivalent concern about the need for the Commission to review common defense and security issues, the NRC thinks the approach outlined is reasonable and appropriate.

e. Conditions of Construction Authorization. The final rule specifies (§60.32(b) that the construction authorization "will incorporate" conditions requiring the submission of certain periodic or special reports. This wording differs from that of the proposed rule which stated that the Commission "may, at its discretion incorporate" these conditions. The NRC agrees with a commenter that such reports will be needed and that there is no reason to reserve discretion, as the proposed rule would have done. The particulars of the conditions would, of course, depend upon the nature of the project that is to be constructed.

f. License Specifications. The Commission has accepted a suggestion to delete a requirement for including, as license conditions, restrictions as to the location and characteristics of the storage medium. As noted by a commenter, these features may be inherent in the storage medium itself.

g. Inspections. The final rule contains a provision (§60.73(c)) requiring DOE to provide on site office space for the exclusive use of NRC inspectors and personnel.

h. Participation of Indian Tribes. Several changes have been made in the rule to provide for full participation by Indian tribes in the licensing procedures. These changes generally provide that tribes shall have the same opportunities as governmental units. A new Section 60.64 provides that Indian Tribes shall have the same opportunities as States to submit proposals for their participation in the NRC review. These proposals shall be approved (and may be funded) if appropriate findings

(c) The Director of Nuclear Material Safety and Safeguards will also cause to be published in the FEDERAL REGISTER notice of, and will inform the State, local, and Tribal officials specified in §2.104(e) of any action with respect to an application for a license to receive and possess high-level radioactive waste at a geologic repository operations area pursuant to Part 60 of this chapter, or for the amendment to such license, for which a notice of proposed action has been previously published.

Section 2.764 is amended by revising the caption, by adding a new paragraph (d), and by making conforming changes to paragraphs (a) and (b) to read as follows:

§ 2.764 Immediate effectiveness of certain initial decisions.¹

(a) Except as provided in paragraphs (c) and (d) of this section, an initial decision ***

(b) Except as provided in paragraphs (c) and (d) of this section, the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards ***

* * * * *

(d) An initial decision directing the issuance of a construction authorization or license under Part 60 of this chapter (relating to disposal of high-level radioactive wastes in geologic repositories) or any amendment to such a license authorizing actions which may significantly affect the health and safety of the public, shall not become effective until review by the Commission has been completed. The Director of Nuclear Material Safety and Safeguards shall not issue a construction

¹The temporary suspension of § 2.764(a) and (b) in certain proceedings and related matters is addressed in Appendix B to this part.

authorization or a license under Part 60 of this chapter, or any amendment to such license, until expressly authorized to do so by the Commission.

Section 2.780 is amended by adding a new paragraph (g) to read as follows:

§ 2.780 Ex parte Communications.

* * * * *

(g) In the case of an application for a license under Part 60 of this chapter (relating to disposal of high-level radioactive wastes in geologic repositories), this Part requires a proceeding on the record prior to the issuance of a construction authorization. Unless the Commission orders, otherwise, the issuance of a construction authorization (or a final decision to deny a construction authorization) shall be deemed, for purposes of this section, to terminate all proceedings on the record then pending before the NRC with respect to such application.

PART 19 - NOTICES, INSTRUCTIONS AND REPORTS TO WORKERS; INSPECTIONS

§19.2 Scope.

[7:]9. 10 CFR 19.2 is amended by adding "60," following "35, 40,".

§19.3 Definitions.

[8:]10. 10 CFR 19.3(d) is amended by adding "60," following "35, 40,".

PART 20 - STANDARDS FOR PROTECTION AGAINST RADIATION

§20.2 Scope.

11. 10 CFR 20.2 is amended by adding "60," following "35, 40,".

§20.3 Definitions.

12. 10 CFR 20.3(a)(9) is amended by adding "60," following "30, 40,".

§20.301 General Requirement.

13. 10 CFR 20.301(a) is amended by adding "60," following "30, 40,".

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.

Staff Response to Comment No. 31:

See discussion of Comment No. 32.

Comment No. 32: Natural Resources Defense Council Inc. (12)

NRDC concurs that NEPA requires DOE to evaluate fully several alternative sites in a variety of geologic environments. The proposed regulations, however, inexplicably do not themselves require the Department to consider several sites in a variety of different types of rock as a matter important for protection of public health and safety. (See, 44 Fed. Reg. 70415; footnote.) We believe strongly that pursuant to its obligation under the Atomic Energy Act to protect public health and safety, the NRC should require a specific, minimum number of sites that the Department must characterize. In particular, we urge the NRC to incorporate the recent Presidential directive, based on the recommendation of a majority of the Interagency Review Group on Nuclear Waste Management, to the Department to locate at least four sites in a variety of different geologic environments before selecting the first site for a repository.⁶ We interpret the phrase "a variety of geologic environments" in the Presidential "Fact Sheet" to mean that at least three different types of rocks have to be characterized.

⁶Office of the White House Press Secretary, "Fact Sheet, The President's Program on Radioactive Waste Management," p. 4 (dated February 12, 1980).

Staff Response to Comment No. 32:

As this rule is written, [F]the statutory basis for multiple site characterization is the National Environmental Policy Act. Under NEPA, an agency's consideration of alternatives is governed by a "rule of reason." Whether the number of alternative sites characterized is sufficient, and whether the analysis of such sites (at depth or otherwise) has been adequate, thus rests upon a concept of reasonableness. As the Commission has stated, it considers site characterization at three sites, representing a minimum of two geologic media to be the minimum needed to satisfy NEPA, but it does not believe that NEPA permits the NRC to say that characterization at three sites would always be either necessary or sufficient. Nor

can we specify, as an abstract proposition, the detail of the investigation that will be necessary for us to discharge our duty under NEPA to consider alternatives.

Under the provisions of the Atomic Energy Act, a consideration of alternatives might also be appropriate, where necessary or desirable to protect health.

Section 161 g. The NRC anticipates, however, that its fundamental licensing inquiry in this context will be directed to determining whether the activities proposed by the DOE can be carried out in a manner consistent with generally applicable environmental standards established by the Environmental Protection Agency.

Comment No. 33: Environmental Policy Institute (3)

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.

Staff Response to Comment No. 33:

The requirement of multiple site characterization is presented in paragraph 51.40(d).

A license application will be submitted by DOE for the preferred site selected from among the characterized sites. Alternatives must be considered in connection with each construction authorization in accordance with 10 CFR Part 51, as amended. See, also, the responses to comments 28 and 32. Since the requirements for information on other sites derives from NEPA, such information would

be contained in the applicant's environmental report and not in the safety analysis report.

Comment No. 34: Southwest Research and Information Center (23)

Before NRC can make determinations about site characterization, it must require in its rules that DOE provide detailed information about all sites examined—presumably at least 10-12 locations before 4 or more are selected or further work. Such numerical goals for sites considered should be specified in the rule as the minimum requirement. The site characterization report(s) from DOE must include a detailed review of all sites examined and evaluated. Only through

STAFF RESPONSE TO COMMISSIONER BRADFORD'S MEMO OF DECEMBER 18, 1980

- 7 MODIFICATIONS: AGREE IN ENTIRETY
- 2 MODIFICATIONS: AGREE IN PART
- 3 MODIFICATIONS: TECHNICAL CRITERIA WILL ADDRESS
- 2 MODIFICATIONS: REQUIRE LEGISLATIVE CHANGES
- 5 MODIFICATIONS: STAFF DISAGREES

AGREE IN ENTIRETY

- #4: COMMISSION INVOLVEMENT DURING SITE CHARACTERIZATION
- #5: SUBMISSION UNDER OATH
- #6: IMMEDIATE EFFECTIVENESS
- #10: DELETION OF "SIGNIFICANT" IN 60.71 (c)(3)
- #11: OPEN MEETING POLICY
- #16: EIS FOR RECEIPT AND EMPLACEMENT OF WASTES
- #17: DIFFERENCES BETWEEN CHARACTERIZATION WORK DONE AND CHARACTERIZATION WORK PLANNED

AGREE IN PART

- #7: DIRECTOR'S VIEWS ANYTIME DURING SITE CHARACTERIZATION BUT LACK AUTHORITY ON REQUIREMENTS TO RECEIVE INFORMATION DURING SITE CHARACTERIZATION
- #9: INCORPORATION OF ESSENTIAL DESIGN CRITERIA INTO CONSTRUCTION AUTHORIZATION
(NOTE: ALREADY THERE, SEE 60.32) BUT LACK AUTHORITY TO REQUIRE APPROVAL OF MODIFICATION

TECHNICAL CRITERIA WILL ADDRESS

- #12 STANDARDS FOR ALTERNATIVE SITES
- #14 DEFINITION OF "SITE" AND "MEDIUM"
- #15 DECOMMISSIONING CRITERIA

NEED LEGISLATION

#8 ORDERS, DURING SITE CHARACTERIZATION

#19 ENFORCEMENT ACTIONS DURING CONSTRUCTION

STAFF DISAGREES

- #1 REQUIRE ALTERNATIVE SITES UNDER AEA
- #2 SPECIFICATION OF MANDATORY MINIMUM OF SITES
TO CHARACTERIZE
- #3 MANDATORY TESTING AT DEPTH
- #13 COMMON DEFENSE AND SECURITY
- #18 STEP-BY-STEP WASTE EMPLACEMENT