

December 11, 1980

For: The Commissioners

From: William J. Dircks,
Executive Director for Operations

Subject: SUPPLEMENT TO SECY-80-474C-FINAL RULE-10 CFR PART 60, "DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTES IN GEOLOGIC REPOSITORIES--LICENSING PROCEDURES"

Purpose: To forward to the Commission, in comparative text, changes which the staff recommends be made in the subject final rule.

Discussion: On December 8, 1980, a meeting was held at DOE's request between NRC and DOE staff members to discuss certain problems DOE had identified in the wording of the final rule - 10 CFR Part 60 (SECY-80-474C). As a result of this meeting, the NRC staff recommends that the following changes be made to Enclosures A and B to SECY-80-474C. The reasons for these changes are discussed below.

Enclosure A

Page 15 - DOE has indicated that it intends to provide opportunity for public comment on its site characterization report prior to submitting it to NRC for review. Hence the focus of public comment subsequently to be requested by NRC should be on the NRC staff's analysis of DOE's site characterization report, although comments to the NRC on the site characterization report itself may also be expected, and will be accepted. Further, there is no intent to change the role or opportunity for state participation in NRC's review of the site characterization.

Page 15, Line 6 - the public "hearing" on DOE's site characterization report should had been termed a "meeting", as subsequent discussion in this section demonstrates.

Page 38 - A footnote has been added to indicate that information on the criteria and methods used for site selection identification and location of alternative sites and media; and the decision process used to select the site including means used to obtain public Indian tribal and State views, which all can be expected to be in DOE's Environmental Impact Statement for site characterization, need not be duplicated in the site characterization report, but can be incorporated by reference.

Page 40 - A sentence has been added to 60.11(e) to explicitly note that a copy of the NRC's final site characterization analysis and the Director's opinion will be transmitted to DOE.

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Enclosure B

Changes in the response of comments have been made to clarify the intended focus of public comment during NRC's review of DOE's site characterization report.

Substitute pages in comparative text indicating changes to SECY-80-474C are attached.

A handwritten signature in dark ink, appearing to read 'William J. Dircks', is positioned above the printed name.

William J. Dircks
Executive Director for Operations

Attachments:
As stated

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 ~~[both the-report-and-a]~~ 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 one commenter. The Commission's review of the history of the Energy Reorganization Act of 1974 indicates that NRC's review was deemed to be important to protect the health and safety of

Subpart B - Licenses
Preapplication Review

§60.11 Site characterization report.

(a) As early as possible after commencement of planning for a particular geologic repository operations area, and prior to site characterization, the DOE shall submit to the Director a site characterization report. The report shall include* (1) a description of the site to be characterized; (2) the criteria used to arrive at the candidate area; (3) the method by which the site was selected for site characterization; (4) identification and location of alternative media and sites at which the DOE intends to conduct site characterization and for which the DOE anticipates submitting subsequent site characterization reports; (5) a description of the decision process by which the site was selected for characterization, including the means used to obtain public, Indian tribal and State views during selection; (6) a description of the site characterization program including (i) the extent of planned excavation and plans for in situ testing, (ii) a conceptual design of a repository appropriate to the named site in sufficient detail to allow assessment of the site characterization program with respect to investigation activities which address the ability of the site to host

*To the extent that the information indicated in items 2 through 5 appears in an Environmental Impact Statement prepared by DOE for site characterization at the named site, it may be incorporated into DOE's site characterization report by reference.

(d) The Director shall prepare a draft site characterization analysis which shall discuss the items cited in paragraph (a) of this section. The Director shall publish a notice of availability of the draft site characterization analysis and a request for comment in the Federal Register. Copies shall be made available at the Public Document Room. The Director shall also transmit copies to the Governor and legislature of the State and the chief executive of the municipality in which a site to be characterized is located (or if it is not located within a municipality, then to the chief executive of the county, or to the Tribal organization if it is to be located within an Indian reservation) and to the Governors of any contiguous States.

(e) A reasonable period, not less than 90 days, shall be allowed for comment on the draft site characterization analysis. The Director shall then prepare a final site characterization analysis which shall take into account comments received and any additional information acquired during the comment period. Included in the final site characterization analysis shall be either an opinion by the Director that he has no objection to the DOE's site characterization program, if such an opinion is appropriate, or specific objections of the Director to the DOE's proceeding with characterization of the named site. In addition, the Director may make specific recommendations to the DOE on the matters pertinent to this section. A copy of the final site characterization analysis and the Director's opinion will be transmitted to DOE.

(f) Neither issuance of a final site characterization analysis nor the opinion by the Director shall constitute a commitment to issue any authorization or license or in any way affect the authority of the Commission, the Atomic Safety and Licensing Appeal Board, Atomic Safety and

We have two concerns about this approach. First, our interpretation of the significance of repository selection is such that two media should be investigated at a minimum of two sites per medium. Second, NRC's intent with respect to considering alternatives is not reflected in the regulations. There is no requirement for DOE to submit more than one site characterization report or to characterize more than one site. Furthermore, the Environmental Impact Statement (EIS) filed with the license application may have to be site specific to fulfill the requirements of sections 51.5 and 60.21. We suggest that the regulations specify more explicitly the requirements for site characterization and the contents of the site characterization report. Alternatively, an EIS could be required for the site characterization process. In addition, the proposed regulations do not provide for adequate consideration of either NRC's or the public's comments on site characterization reports. The regulations should specify that DOE must respond to issues raised in the site characterization report.

Staff Response to Comment No. 29:

The Commission considers site characterization at three sites representing a minimum of two geologic media to be the minimum to satisfy NEPA (paragraph 51.40 (d)).

With respect to multiple site characterization and the site characterization report, paragraph 60.11(a) states that the report shall include "(5) 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."

The definition of "site characterization" appropriately describes the scope of the activity; greater detail is unwarranted in view of the need to take into account the many differences from one site to another. The staff does not consider it necessary to require DOE to respond specifically to NRC or public comments, although the staff expects DOE to do so. DOE has indicated that it will provide opportunity for public comment on its site characterization report prior to submittal to the NRC. Obviously, any failure to deal with significant issues in DOE's submissions will result in delays or the creation of issues that must be resolved in formal proceedings.

IX. FOUR COMMENTERS ADDRESSED THE ISSUE OF PUBLIC PARTICIPATION

Comment No. 86: Environmental Protection Agency (26)

The proposed rule appears to provide adequate opportunity for review by the public and by local, State, and Federal agencies. In addition, we note that the President intends to establish a State Planning Council which will strengthen intergovernmental relationships and help fulfill the joint responsibilities for the protection of public health and safety in radioactive waste matters.

Staff Response to Comment No. 86:

The recommendations of the State Planning Council will be considered in a timely manner.

Comment No. 87: Natural Resources Defense Council (12)

The intent of the proposed provisions for state and general public involvement in the NRC's reviews of DOE's plans are also highly desirable. The federal government in the past gave too little attention to the advice and concerns of state officials, independent scientists and the general public, particularly at the early stages of investigating and developing facilities for long-term storage or disposal of radioactive wastes.

Staff Response to Comment No. 87:

The NRC welcomes comment from State, Indian and local government, as well as the scientific community and the general public, on all aspects of the HLW disposal problem. The NRC intends to obtain input from the public during the early stages of licensing an [the] HLW repository. [program-by-publishing-a-notice-in-the Federal-Register-when-the-BØE-submits-a-site-characterization-report-to-the NRC-Director-of-NMSS:--This-notice-shall-publicly-identify-the-site(s)-selected for-characterization-by-the-BØE:] The [Director-of-NMSS] NRC staff will prepare a draft site characterization analysis of DOE's site characterization report and publish a notice of availability and request for public comments in the Federal Register. This information will then be made available at the Public Document Room.

Comment No. 88: Sierra Club (9)

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.

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.

Staff Response to Comment No. 88:

NRC may establish waste form criteria and consider a proposed waste form in the course of licensing proceedings, but the DOE has the programmatic responsibility for the waste form research and development program. Therefore, it would be inappropriate for the NRC to require the type of formal proceedings proposed by the commenter.

However, paragraph 60.11(a)(7) of the proposed rule requires the DOE to include a description of the research and development activities being conducted by the DOE that deal with the waste forms which may be considered appropriate for the sites to be characterized. The NRC staff's analysis of DOE's [The] Site Characterization Report will be available for public comment in accordance with notice entered in the Federal Register by the NRC. [The-NRC-will-welcome-comments-on-the-DOE's-waste-form-program;-along-with-comments-on-the-other-aspects-of-the-Site-Characterization-Report;-insofar-as-such-comments-may-assist-in-the-preparation-of-NRC's-site-characterization-analysis:] The question of intervenor funding is a broader question beyond the scope of this rulemaking action. Moreover, a specific licensing regulation is an inappropriate place to address a provision which is a matter of general Commission practice.