October 21, 1982 SECY-82-427

RULEMAKING ISSUE
(Notation Vote)

For: The Commissioners

From: William J. Dircks
Executive Director for Operations

Subject: COMMISSION OPTIONS ON DEVELOPING FINAL TECHNICAL CRITERIA FOR DISPOSAL OF HIGH-LEVEL WASTE IN GEOLOGIC REPOSITORIES

Purpose: The purpose of this paper is to advise the Commission of an issue that has arisen in developing the final HLW rule as a result of the absence of an EPA standard, and to seek the Commission's guidance on how to proceed.

Discussion: The NRC staff has been developing its licensing criteria for geologic disposal of HLW for several years. An Advance Notice of Proposed Rulemaking was published for comment in May 1980, and a Proposed Rule was noticed for comment in July 1981. Throughout this period publication of a proposed EPA standard for HLW disposal was believed to be immirent. EPA was also expected to have taken the lead in preparing an Environmental Impact Statement on the environmental radiological effects of its proposed standard. Accordingly, to avoid duplication of effort, and at EPA's suggestion, the NRC environmental appraisal which accompanies Part 60 does not consider the radiological effects of the performance objectives. Neither the EPA standard nor the EIS have yet been published. The proposed standard has been under review by OMB for about nine months. No decision is yet available on a date for issuance of the EPA standard.

A number of commenters on the proposed rule questioned the numerical performance objectives NRC had proposed and how they related to the standard EPA was developing. The NRC

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staff attempted to address these issues in developing the final rule by adopting as an overall performance objective a working draft EPA standard that was referenced by several of the commenters on the proposed rule. The staff then analyzed the performance of model repositories in several geologic media of interest and demonstrated how the proposed NRC numerical criteria contributed to ensuring that the working draft EPA standard was met.

Because the final EPA standard might differ from the draft used for the analysis, the staff made provisions to allow for DOE to propose alternatives to the numerical performance objectives for the individual barriers, provided the final EPA standard were met.

While the staff considered this technical approach reasonable in light of the continued delay by EPA, we want to bring a policy question to the attention of the Commission.

Continuing to follow the course we are on to finalize Part 60 in the absence of an EPA standard is likely to subject the agency to considerable criticism, both from the public and the Congress. We would end up taking the blame for EPA's failure to perform. In fact, we would divert much of the attention away from where it belongs -- on EPA and OMB. When EPA finally does issue its standard, we would need to review the rule in any event, and revise it, if needed. There may be little to be gained from finalizing the numerical criteria in question and much to lose. Therefore, we are proposing several options for the Commission's consideration:

Option 1 - Finalize the rule except for the numerical subsystem performance objectives for the engineered barrier system. These two performance objectives, for the waste package containment time and the release rate from the engineered barrier system, are closely linked to providing confidence that the EPA standard would be met. They would be reserved until after EPA publishes an effective standard.

Option 2 - Finalize the rule except for the numerical performance objectives for the waste package containment time and the release rate from the engineered barrier system. These two numbers would be reserved as in Option 1, but we would request public comment on how to proceed in the absence of an EPA standard.

Option 3 - Finalize the rule including the two performance objectives for the engineered barrier system and state that we will review the performance objectives after the EPA standard is issued and revise them in a subsequent rulemaking, if necessary. This is the path we have been on.

Option 4 - Leave the entire rule in proposed form until the EPA standard is issued.

Option 5 - Re-notice the rule described under Option 3 and in SECY-82-288.

Analysis of Options

Option 1 - This option has the advantage of getting most of the rule in place so that it would be available to guide the National Program over the next several years while DOE is conducting site characterization. It also focuses attention on the absence of the EPA standard and avoids putting the NRC ahead of EPA in the eyes of Congress and the public. When the EPA finally promulgates its standard, we should be able to finalize the performance objectives relatively quickly. We expect this option would require the least staff resources.

Option 2 - This option is similar to Option 1 in that it allows the rule to be finalized except for the two numerical performance objectives for containment and controlled release, but it allows for public comment on where we are and how to proceed. It has the advantage of allowing public input to the decision-making process, and increasing public awareness of the implications of the absence of the EPA standard.

If the Commission selected this option, we would request public comment on the approach of reserving the two numerical performance objectives until the EPA standard is published versus the approach of finalizing the numerical performance objectives and relying on the flexibility provisions that have been included in the final rule to accommodate changes in the EPA standard.

Also, in the notice of proposed rulemaking for the technical criteria, we stated that additional criteria might be developed for regulating disposal in the unsaturated zone. The staff has now done so, and would need to request public comment on proposed criteria for disposal in the unsaturated zone, in any event. For efficiency, we would combine these requests for comment with the notice of publication of the final technical criteria.

Option 3 - Under this option, we would publish the final rule, including the numerical performance objectives for the engineered barrier system. While this approach would put the entire NRC regulatory framework in place, it has the disadvantages noted above.

Option 4 - Under this option the DOE program to select sites for characterization and to carry out site characterization would proceed without either the EPA standard or the NRC criteria in place to provide direction. This option could put considerable pressure on EPA to get its standard issued, but at the price of public perception that the federal government can't perform. DOE staff have informed the NRC staff that they need the rule in place to focus their program.

Option 5 - Under this option we would re-notice the technical criteria as revised in light of public comment received on the proposed technical criteria. This would allow the prominence of the technical criteria--and, hence, their utility as guidance--to be preserved; and the relationship between the technical criteria and the draft EPA standard, referenced in public comment on the proposed rule, to be reviewed by the public. It would flag to Congress and the public the absence of and need for an EPA

standard. This approach would have the disadvantages of delaying issuance of final technical criteria, of requiring further expenditure of staff resources to finalize them, and of perhaps appearing to be ahead of EPA in the eyes of Congress and public.

Recommendation: That the Commission approve Option 2.

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Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, November 5, 1982.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT Friday, October 29, 1982, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for discussion at an Open Meeting during the Week of November 1, 1982. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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Attached are copies of a Commission meeting transcript/s/ and related meeting document/s/. They are being forwarded for entry on the Daily Accession List and placement in the Public Document Room. No other distribution is requested or required. Existing DCS identification numbers are listed on the individual documents wherever known.

Meeting Title: Options Regarding High-Level Waste Rule-Technical Criteria (Part 60)

MEETING DATE: 11/18/82 Open X Closed ___

ITEM DESCRIPTION:	Copies Advanced To PDR:	DCS COPIES: (1 of each Checked) Original Document	May be Dup*	Duplicate Copy*
1. Transcript (with viewgraphs attached)	1	1	___	___
2. Presentation by F.D. Coffman, DOE	1	1	___	___
3. Secy-82-427	1	___	1	___
4. Comments of Glen L. Bjodlom, EPA	1	1	___	___
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