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

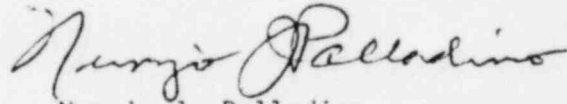
July 6, 1982

Mr. Ronald K. Peterson  
Assistant Director for  
Legislative Reference  
Office of Management and Budget  
Washington, D.C. 20530

Dear Mr. Peterson:

In response to your letter of May 5, 1982 and pursuant to the May 19, 1982 telephone conversation between the Office of the General Counsel and Mr. Jim Murr, the Nuclear Regulatory Commission submits the enclosed comments about S. 1662, the "National Nuclear Waste Policy Act of 1982." The Commission supports early enactment of comprehensive waste management legislation.

Sincerely,

  
Nunzio J. Palladino

Enclosure:  
As stated

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U.S. NUCLEAR REGULATORY COMMISSION  
COMMENTS ON S. 1662,  
"NATIONAL NUCLEAR WASTE POLICY ACT OF 1982"

1. The Commission believes that it is appropriate to establish a realistic timetable for the development of waste repositories. Meeting the deadline in such a schedule could be expected to increase public confidence in the federal government's ability to provide for safe waste disposal. On the other hand, failure to meet the deadlines could be taken as another major setback in the federal waste program. Accordingly, the Commission believes that it is vitally important to establish realistic deadlines in S.1662. In this regard, the Commission believes that proposed times in S.1662 for NRC action are tight but reasonable if the Department of Energy (DOE) submits a complete application for a construction authorization. Any deficiencies in DOE's application could delay the NRC's review of that application.
2. Section 203(b) would require the NRC to promulgate regulations or other regulatory guidance on the training and requalification of certain civilian nuclear power plant personnel no later than one year after enactment of this Act. The NRC staff estimates that approximately two years would be needed to develop such regulations and that approximately one year would be needed to conduct a rulemaking proceeding. Accordingly, the Commission recommends that Section 203(b) be modified to provide the NRC three years to promulgate such regulations.
3. If Congress intends Section 204 to completely dispose of all the issues in the waste confidence proceeding, then it would be helpful to provide legislative history to this effect in the conference report on a final waste bill. As drafted, Section 204 could be interpreted as not resolving all the issues in the Commission's waste confidence proceeding. Commissioner Ahearne would not have made this comment.

Commissioner Gilinsky believes that the Court of Appeals raised a valid question concerning waste storage and disposal, and the Commission should have to face up to it. He believes that, since the waste confidence proceeding is so far along, the Commission should complete it.

4. Section 308(f) would subject away-from-reactor storage facilities to a procedure for state objection. In the past, the Commission has opposed a state veto on the siting of an away-from-reactor (AFR) storage facility. The Commission believes that short-term storage facilities, such as AFRs, will not present the unique potential hazards associated with long-term waste repositories and, therefore, need not be treated differently than other nuclear fuel-cycle facilities not intended for long-term use.

Commissioner Asselstine does not agree with this comment on Section 308(f). Commissioner Asselstine believes that Section 308(f) does not authorize an absolute state veto, since the President would

retain the authority to override any state objections to the facility by determining that the facility is essential to the national interest. Moreover, Commissioner Asselstine believes that the state participation mechanism contained in Section 308(f) of the bill is appropriate to address the concerns of the states regarding AFR spent fuel storage facilities, and particularly, their concern that an AFR facility may become a long-term storage facility.

5. Section 311(a) would give the Commission, along with other federal officials, responsibility to encourage and expedite the use of existing and new capacity for storing spent fuel at reactor sites. The NRC would also be explicitly required to take into account public views on any proposed increase in storage capacity. An NRC role to encourage certain actions by the nuclear industry would be a departure from the current NRC role of licensing and regulatory responsibilities established under the Energy Reorganization Act of 1974. Accordingly, the Commission prefers that Section 311(a) be amended to delete the NRC.

However, if Section 311(a) is not amended to delete the NRC, the Commission recommends that Congress make clear in its legislative history of this section that the explicit requirement for the consideration of public views is not intended to expand the current scope of public participation in NRC proceedings.

6. The Commission is concerned that Section 505(c) could unduly restrict the NRC's consideration of any license application for a monitored retrievable storage (MRS) facility by precluding the NRC from applying the technical criteria for long-term storage facilities established in 10 CFR Part 60. Section 505(c) would direct the Commission "not [to] consider ... any alternative to the design criteria set forth in section 502 of this Act." This provision could be interpreted as limiting the NRC's consideration of safety and other technical criteria to the Section 502 design criteria which would be inadequate if the MRS were to become a long-term storage facility. Because it is foreseeable at this time that an MRS facility may be used for long-term storage, the Commission should retain the ability to apply the Part 60 technical criteria which the NRC will adopt as necessary for the safe construction and operation of long-term storage facilities.

Commissioner Asselstine does not agree that the Part 60 technical criteria for geologic repositories should be applied to NRC licensing actions for any proposed [MRS] facility. Commissioner Asselstine does not believe that the restrictions in S.1662 relating to the design criteria for an MRS facility limit the Commission's ability to establish necessary licensing requirements for an MRS facility.

7. Section 403(a) in the version of S.1662 passed by the Senate would require the Secretary of Energy to obtain the Commission's concurrence before issuing general guidelines for selecting repository sites. The Commission is concerned that NRC concurrence

could be interpreted as binding the NRC to specific licensing decisions involving those site selection criteria. Such an interpretation would be especially troublesome if the NRC and DOE were to disagree on the interpretation of a particular guideline. Accordingly, the Commission recommends that Section 403(a) be amended to explicitly provide that NRC concurrence in DOE site selection guidelines will not bind the Commission on subsequent licensing decisions.

Commissioner Gilinsky believes that Sections 403(a) and 405(f) may be inconsistent with the site selection procedures in 10 CFR Part 60, Disposal of High-Level Radioactive Wastes in Geologic Repositories: Licensing Procedures, 46 Fed. Reg. 13971 (February 25, 1981) ("Final Rule"). He notes that the Commission determined that the National Environmental Policy Act (NEPA) required the consideration of at least three sites in at least two media, one of which would not be salt. 10 CFR 50.14(d) and 46 Fed. Reg. 13972. He also notes that under Sections 403(a) and 405(f), the Commission's review of alternatives may be limited to one geologic medium. He further notes that in its Final Rule, the NRC made it clear it expected more than three sites and that three was the minimum number. He fears that three sites are now more often portrayed as the maximum number. He believes that Section 405(f)(1) limits consideration of alternative sites by NRC to those sites recommended by January 1, 1984. He further believes that if the President disapproves one or more of DOE's first three sites within 60 days prior to January 1, 1984, NRC could have a rather short list of sites to review on January 1, 1984, or no list at all.

8. Commissioner Gilinsky notes that Section 312(b) would require the NRC to issue an interim license for additional spent fuel storage capacity before the conclusion of any hearing on a proposal for such storage if the enumerated statutory factors are satisfied. He believes that the Commission should retain the discretion to deny a petition for an interim license if the petitioner fails to establish the urgency for interim relief. In this connection, he would note that a full core reserve is not a safety requirement, and that its potential loss would not create a situation that would automatically constitute a showing of urgency.