



OFFICE OF THE  
CHAIRMAN

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

August 13, 1982

The Honorable Victor Atiyeh  
Governor of Oregon  
Chair of Western Governors' Conference  
The Council of State Governments  
165 Post Street, 5th Floor  
San Francisco, CA 94108

Dear Governor Atiyeh:

This is in response to your letter of June 21, 1982 forwarding the resolution on high-level nuclear waste disposal.

The majority of the issues raised in the resolution are those being considered by the Congress in the development of comprehensive high-level waste legislation. The issues address the broad outlines of a waste program and procedural safeguards, rather than specific NRC program areas. Although some of the issues addressed by the resolution are outside the scope of NRC's authority, many of the positions taken by the Conference are similar to those provided by the Commission in testimony before Congress and responses to Congressional inquiries. The enclosure describes in more detail the Commission's position on each of the issues addressed in the resolution.

From the outset, in setting up the procedures for licensing high-level waste repositories, the Commission has been very sensitive to the need for providing states a special role in the licensing process. Within the past several months, we have interacted with several states as part of our ongoing program and will continue to make every effort to assure that the states have early and continuous involvement in high-level waste pre-licensing and licensing activities.

Sincerely,

Nunzio J. Palladino  
Chairman

Enclosure:  
NRC Comments on Issues Raised  
in Resolution 82-11

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## NRC COMMENTS ON ISSUES RAISED IN RESOLUTION 82-11

### 1. State Consultation and Concurrence:

The Commission has testified that it would support statutory recognition of the legitimate concerns of states in which waste facilities may be located or states that may be directly affected by such facilities. The Commission opposes unconditional state authority to veto a proposed facility, but supports provisions enabling a state to suspend the siting process for Congressional or Presidential review of its objections after a sufficient record has been established to permit an informed decision. The Commission has no recommendation on the specific procedures for the resolution of state/federal disputes, but the Commission has testified that we would prefer the opportunity for state non-concurrence to be provided after the Commission has decided to authorize facility construction. The state decision would then come before the commitment of funds for facility construction, but after the Commission had fully developed a factual record and a reasoned statement of its conclusions that would be available for use in the resolution of any state objections. If a state were to continue to object after examination of the record on health, safety and environmental considerations, after consultation with DOE, and after participation in NRC licensing proceedings, then a strong argument can be made for suspension of the process pending a review of the record either by Congress, the President or both.

### 2. NEPA Compliance:

The Commission supports full environmental review pursuant to the National Environmental Policy Act in the selection of potential repository sites from a range of geologic media. The Commission has stated, in a letter to Congressman Fish, that there are no NRC actions prior to the selection of a repository site by the Secretary which the Commission would consider to be a major Federal Action under NEPA. The Commission does not believe, however, that both DOE and NRC should prepare separate, duplicative environmental impact statements (EIS's). In the same letter to Congressman Fish, the Commission stated that while there are advantages to NRC conducting a completely independent evaluation, there are disadvantages of sufficient impact that they should be avoided. These include a duplication of effort, unnecessary broadening of the issues in a proceeding that may in any event be extremely complex, and the delays that may be caused by the formal adjudication of environmental issues. The Commission believes that the advantages of independent NRC review can be preserved by requiring DOE to obtain our concurrence in its plan for an EIS, by allowing us to utilize the body of the EIS without DOE's conclusions, to supplement it as we deem necessary, and to draw our own independent conclusions for purposes of construction authorization.

### 3. NRC Licensing:

In enacting the Energy Reorganization Act of 1974 (ERA), Congress shared the concern of the Governors that DOE waste disposal activities be subject to independent oversight by NRC. Under the ERA, NRC licenses DOE facilities for interim storage of high-level waste from commercial nuclear activities, and long-term storage and permanent disposal of high-level waste from both commercial and military activities. The Act uses the words "storage" and "long-term storage" to refer to activities licensed by NRC. NRC has interpreted such language to include disposal, but has requested legislative clarification to assure that our authority is clearly established. The Commission has also defined "high-level waste" to include spent fuel, and thus has the authority to license DOE interim storage of spent fuel from licensed activities.

With regard to NRC licensing authority over Test and Evaluation (T&E) facilities, the Commission stated in a letter to Congressman Ottinger that generally speaking, under ERA, a T&E facility involving the emplacement of high-level wastes used for or as part of research and development activities would not be subject to licensing. The Commission recommended that, where T&E facilities could possibly become part of a geologic waste repository, DOE activities should be conducted in accordance with the requirements of the Commission's high-level waste licensing procedural regulation, 10 CFR Part 60.

All T&E facilities currently being proposed by DOE and in the Congress are to be exempt from NRC licensing. In testimony before Congressman Udall, NRC staff stated that, if applied to T&E activities, Part 60 would provide satisfactory precautions against damaging the site and precluding future licensing. NRC also said that licensing would not be desirable for small-scale research and development facilities "where no more than some tens of spent fuel assemblies or waste canisters would be emplaced for a limited test period and then removed." Licensing would be desirable for pilot operations at a possible repository site, however.

### 4. Impact Assistance:

As NRC stated in a letter to Senator Leahy, the determination of fees to be charged users of DOE waste facilities and the expenditure of funds collected is beyond the scope of NRC authority. It is not likely, however, that DOE could include "socioeconomic" costs to a community in user fees established for a DOE-operated facility unless the Congress specifically authorized recovery of such costs. Under present general fee-setting authority (31 U.S.C. 483a) an agency of the United States is limited to recovering the direct and indirect costs incurred by the agency itself in providing the service for which it is charging a fee.

#### 5. Military Waste:

The Commission's comments on consultation and concurrence, summarized on page 1, apply to this question as well. Under ERA, repositories for permanent disposal of military high-level waste that are not part of research and development activities are subject to NRC regulatory requirements as are repositories for commercial waste. In its report to Congress on "Means for Improving State Participation in the Siting, Licensing and Development of Federal Nuclear Waste Facilities," which recommended a strong state role, the Commission made no distinction between commercial and military high-level waste repositories.

#### 6. Freeze on DOE Activities:

NRC staff provided comments for DOE's consideration in finalizing the Public Draft National Plan for Siting High-Level Radioactive Waste Repositories and Environmental Assessment. In its comments, the NRC staff stated that the Plan itself is not a decision document, i.e. it describes a general process that DOE will use to screen and select sites. Members of the NRC Advisory Committee on Reactor Safeguards (ACRS) Subcommittee on Waste Management also criticized the document for not prioritizing selection criteria to indicate how DOE will rank order and eliminate sites. Since the Plan is a NEPA document, and is thus subject to the public comment procedures of NEPA and the administrative Procedures Act, we assume that if the comments received by DOE were sufficiently critical, DOE would publish a second draft for public comment. The Commission has not taken a position on whether public hearings on this document would be desirable at this time.

#### 7. Time Schedule:

The Commission shares the Governors' concern that the schedule for siting and construction of a repository reflect the technical capabilities of DOE and allow for timely public involvement. In a letter to Congressman Beville, the Commission stated that under existing laws and regulations, construction authorization will take on the order of three-and-a-half to four years, but that a number of possibilities for delay were outside the Commission's control. These include an incomplete DOE application, unanticipated technical difficulties or other questions which may arise during this first-of-a-kind undertaking. It is therefore critical that DOE have enough time to characterize and select sites and to prepare an adequate application.