

DOCKET NUMBER
PETITION RULE PRM 60-2
(50 FR 18267)

7590-01

Nuclear Regulatory Commission

DOCKETED
USNRC

10 CFR Part 60

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States of Nevada and Minnesota

Filing of Petition for Rulemaking

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

Docket No. PRM-60-2

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Receipt of Petition for Rulemaking from the States of Nevada and Minnesota.

SUMMARY: The Nuclear Regulatory Commission is publishing for public comment this notice of receipt of a petition for rulemaking. This petition, filed by the States of Nevada and Minnesota, and dated January 21, 1985, was docketed by the Commission on January 28, 1985, and assigned Docket No. PRM-60-2. The petitioner requests that the Commission adopt a regulation governing the implementation of certain environmental standards which have been proposed by the Environmental Protection Agency.

DATE: Comment period expires July 1, 1985 . Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

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ADDRESSES: All persons who desire to submit written comments concerning the petition for rulemaking should send their comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Single copies of the petition may be obtained free by writing to the Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition, copies of comments, and accompanying documents to the petition may be inspected and copied for a fee at the NRC Public Document Room, 1717 H Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-492-7086 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

I. Statement of Grounds and Interest

The State of Nevada filed this rulemaking petition as a state notified pursuant to the Nuclear Waste Policy Act (NWPA), that a potentially acceptable site for a repository has been identified within the state.

The State of Nevada avers that it may become affected for purposes of participation in site characterization, pursuant to §113 of the NWA. The State of Minnesota joins this petition as a state informed that it is being considered for site characterization for a second repository. The State of Minnesota avers that it may be directly affected by the substance of standards for the development of repositories. The States of Nevada and Minnesota ground this petition on their respective interest in, and the prevailing responsibility for, the protection of the future health and safety of their citizens.

II. Statement in Support of Petition

The petitioner notes that the NWA, enacted by Congress on December 20, 1982, and approved by the President on January 7, 1983, requires that the President recommend a first, high-level nuclear waste repository location to Congress by March 31, 1987 (§114(a)(2)(A), 42 U.S.C. 10134(a)(2)(A)) or March 31, 1988, if he determines an extension is necessary (§114(a)(2)(B), 42 U.S.C. 10134(a)(2)(B)). The Nuclear Regulatory Commission (Commission) must act upon an application for construction authorization for that repository by January 1, 1989, or within three years of the application's filing (§114(d)(1), (2), 42 U.S.C. 10134(d)(1), (2)). The President's recommendation must be based upon Department of Energy (DOE) site characterization at a site which must have been recommended by January 1, 1985 (§112(b)(1)(D), 42 U.S.C. 10133(b)(1)(D)). Site characterization must be performed pursuant to a plan reviewed by the Commission and the affected state (§113(b)(1), 42 U.S.C. 10133(b)(1)) before characterization begins. That plan must include criteria to be used by DOE to determine the "suitability of such candidate site for the location of a repository, developed pursuant to §112(a);" (§113(b)(1)(A)(iv), 42 U.S.C. 10133(b)(1)(A)(iv)). DOE's §112(a) guidelines, as concurred in by the

Commission on June 22, 1984 (49 FR 28130) require that evidence used to apply those guidelines include "analysis of expected repository performance to assess the likelihood of demonstrating compliance with 40 CFR 191 and 10 CFR 60...." Section 121(a) of the NHPA requires the Environmental Protection Agency (EPA) to promulgate by rule, not later than one year after the date of the enactment of the NHPA, or January 7, 1984, "generally applicable standards for protection of the general environment from offsite releases from radioactive material in repositories." The EPA published a proposed rule, "Environmental Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level and Transuranic Radioactive Wastes" on December 29, 1982 (47 FR 58196). The proposed rule contained a section entitled "Assurance Requirements - 40 CFR 191.14." According to petitioner, such assurance requirements are clearly "generally applicable standards" within the meaning of Section 121(a) of NHPA.

In response to its published notice of proposed rulemaking, EPA received objections regarding the authority of EPA to promulgate the proposed "Assurance Requirements." These objections were based on legal arguments that §121(a) of the NHPA specifically clarifies that EPA's authority to promulgate the proposed rule arises "under other provisions of law." Those "other provisions of law" include the Atomic Energy Act of 1954, as amended, and the President's Reorganization Plan No. 3 of 1970. According to petitioner, the essence of the objection was that Reorganization Plan No. 3 placed within the Federal Radiation Council, which is no longer in existence, rather than EPA, the authority for requirements such as those contained within proposed 40 CFR 191.14.

The statutory deadline for the promulgation of the EPA standards has passed without promulgation of the standards. Petitioner states that the primary reason for that failure is the jurisdictional dispute over EPA's authority to issue the requirements contained in 40 CFR 191.14. The petitioner states that because proposed 40 CFR 191.14 contains generally applicable standards for the protection of the general environment from offsite releases from radioactive materials in repositories, the EPA should proceed to finalize 40 CFR 191. It is also argued that DOE could not make nomination decisions or recommendations for characterization until EPA standards are final.

Petitioner asserts that disputes as to the question of authority preclude EPA from issuing its final standards. The petitioner states further that the general authority of the Commission to protect the health and safety of the public against radiation hazards under the Atomic Energy Act endows the Commission with the power to enact regulations of the nature contained in proposed 40 CFR 191.14 notwithstanding the question over EPA's authority. Therefore, the petitioner suggests that since no objections have been raised regarding the substance of proposed 40 CFR 191.14, and because the proposed rule does provide confidence that the containment requirements of 40 CFR 191.13 would be met by a repository, the NRC should enact under its authority the proposed regulations originally published by EPA on December 29, 1982 (47 FR 58196), thereby removing the jurisdictional issue as an impediment to the EPA's promulgation of the proposed section. According to the petition, once this impediment is removed, the EPA could move to final adoption of its rule. The

petition also recites certain proposed Commission findings, including a finding that the EPA's standards must be final before environmental assessments can be finally published and before DOE may nominate a site or recommend a site for characterization.

III. Conclusion

The assurance requirements referred to by the petitioner have been the subject of prior consideration by the Commission. As a result of such consideration, the Commission on May 17, 1984, directed the staff to continue discussions with EPA on those assurance requirements, with the objective of coming to a mutual agreement on provisions that could be incorporated into 10 CFR Part 60.* If the NRC and EPA staffs arrive at such agreement, appropriate rule changes will be recommended to the Commission. If approved by the Commission, such changes will be published in the Federal Register. There would be an opportunity for further public comment before any final amendments are adopted.

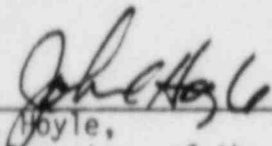
As a matter of orderly administrative procedure, the Commission may elect to continue its efforts to resolve any outstanding differences with EPA, and to deny the instant petition. This would avoid duplicative, and indeed possibly

* The Commission direction to the staff, along with other pertinent materials, has been placed in the file of this proceeding.

conflicting, rulemaking activities. The issues raised in the petition would not be disregarded, but would, on the contrary, be considered in the development of rules acceptable to EPA which the Commission may propose for adoption. Commenters are invited to express their views as to the appropriateness of this course of action.

Dated at Washington, DC this 25th day of April, 1985.

For the Nuclear Regulatory Commission.



John C. Boyle,
Assistant Secretary of the Commission.