

WM DOCKET CONTROL
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Battelle

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November 14, 1986

William J. Olmstead, Esq.
Assistant General Counsel
for Regulations and Fuel Cycle
U. S. Nuclear Regulatory Commission
Washington, DC 20555

Dear Bill:


Enclosed is a copy of a memo I received from a Rockwell attorney which I think you might find interesting. (I hasten to point out that I have no official interest in this matter.)

The concern that I want to bring to your attention arises out of the language in the last paragraph on page 4 and the top of page 5. It appears to me that by insisting upon attendance at "licensing strategy" meetings for the reasons stated, Mr. Cook is creating an appearance that NRC and DOE are partners in the licensing process. While I am sure that his motivation is to ensure that he has access to all relevant information, there is the danger that an appearance will be created that NRC and the license applicant are reaching deals behind closed doors at meetings where the public is excluded. In short, the approach being advocated is exactly the opposite of the open meeting policy followed on the reactor licensing side of the house.

Also enclosed, simply as background, is a DOE memo regarding the procedural agreement between NRC and DOE with regard to the NRC onsite representative.

Best regards.

Sincerely,


Guy H. Cunningham
General Counsel

GHC/ndw

Enclosures

WM Record File

101.2

WM Project 10

Docket No. _____

PDR ☒ W/attach. 1

LPDR ☒ W/attach. 1

Distribution:

REB MJB

JDB

(Return to WM, 623-SS)

Lynethan

Hildebrand

Hale

*Enclosure already in PDR.
TF: REB fm. Olmstead*

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PDR WASTE
WM-10 PDR

2211



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

RECEIVED
OCT 31 1986

R.M. CARTER

October 30, 1986

Mr. J. H. Anttonen
Assistant Manager for Commercial Nuclear Waste
Richland Operations Office
U.S. Department of Energy
P.O. Box 550
Richland, Wa. 99352

Dear Mr. Anttonen:

In a meeting among RHO (Graham, Carter and Hadley) and DOE/RL (Mecca and Kovacs) representatives and myself in Mr. Graham's office yesterday we discussed the training for RHO personnel relative to the provisions of Appendix 7. Mr. Mecca and I highlighted various concepts and meanings of terms contained in Appendix 7 for the RHO representatives. I agreed to identify the items over which I considered there may be misunderstanding and which should be addressed in the training sessions planned for contractor personnel. This information is for RHO's (Carter's) use in preparing the training package and presentations. The comments which follow reflect areas mentioned at the meeting noted herein as well as additional areas which I consider should be addressed. (References to paragraphs in the comments which follow are to paragraphs in Appendix 7.)

a. DOE, DOE contractors and subcontractors upon OR request and following specified QA checks, (see section 3a of the Procedural Agreement) shall provide copies of records of raw data. There is a requirement in the Site-Specific Procedural Agreement that this be accomplished (upon request) with specified QA checks within 45 days of the recording of the raw data.

Raw data in this context is data or information which is factual, i.e. an observation made by a qualified observer or automatically by a device which can record or otherwise preserve information. Raw data is not limited to factual information about material objects or processes, but also includes information about people's action. For example, observations made by a qualified auditor are raw data since they are considered factual.

Information which is deduced by reason involving subjective decision making is not considered raw data in this context. However, information deduced logically from factual information by application of generally available procedures is similar to raw data in the context of Appendix 7, paragraph 3. For example, plans for testing and drawings of conceptualized components and

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systems are not considered raw data. However, information concerning hydrologic potentials calculated in accordance with some procedure, e.a., a computer program, and expressed as a potential map or in some other summarized format would be considered raw data, if the procedure was generally available to the NRC or the public. For example, output from the HEADCO program would be considered raw data, since the information represents manipulations of other raw data by a known and available, non-decisional protocol. There is nothing predecisional about the output of HEADCO using available raw data. On the other hand, information deduced by specified manipulations of other raw data by use of a procedure which is not generally available--not released by the DOE--should not be made available to the OR without DOE clearance and approval. (Only review of such information is permitted without DOE clearance or approval.)

This is Cook's interpretation

The determining factor in deciding whether or not information can be released as raw data is whether or not recipients could have generated the same information with expenditure of some effort considering the procedure for the data manipulation was available to them. In this regard the intent of the the DOE/NRC agreement is to encourage information exchange and not to occasion unnecessary duplication of data evaluations. In the above example concerning HEADCO, since the program is available to the NRC, it would be within the capability of NRC staff to evaluate raw hydrologic data to produce the same deduced information produced by the BWIP personnel, however, such work would be redundant. Hence the interpretation that the output of HEADCO is information which can be given to the OR by contractor or subcontractor staff once specified QA checks are accomplished.

This is Cook's interpretation

b. Records and documents are not the same. A record is any recorded information in any form. A document is a record which has been signed by a cognizant person(s) indicating completion and/or quality--official--and which will be maintained as is without change or destruction indefinitely or for a specified length of time. Documents are a subset of items referred to as records.

Again this is Cook's interpretation

c. Paragraph 3 of Appendix 7 regarding records states that "records shall be available for review, but not to copy or receive copy for retention, at any stage of completion." This means that draft documents as well as final documents, including EA drafts and SCP drafts can be reviewed at any stage of completion. Paragraph 4 addresses release of the documents to the OR for retention. Note the special status of EA and SCP drafts which can not be made public. However, as noted above paragraph 4 does not restrict the OR's review of drafts of the SCP, for example, in contractor or DOE areas.

d. Access to records as provided in paragraph 3 means the freedom to review entire record files whether they be in the document

control center or in contractor staff areas as working files, since working files and permanent files may both be pertinent to a potential licensing decision. It is expected that DOE, contractor and subcontractor personnel will identify such records upon request by the OR and in general assist him logistically in any desired review. Such notification of a request for assistance to review files should be considered to automatically accompany notification of an intent to review a particular area of interest, including interaction with project participants, as provided in paragraph 2.

e. Records which the OR would not normally have access to for review purposes are those which have to do with personnel actions not related to a licensing decision. However, qualifications and training records of personnel accomplishing work for the project would be available for review. Records regarding income, attendance and other personal matters would not be available for review. In addition records which detail company financial status or other company proprietary information not available to DOE by contract should not be available for review. However, recommendations of staff to management or identification of problems by staff, for example, internal audit observations and findings, are records which should be made available to the OR upon request for review purposes. As noted audit observations should be given to the OR as raw data. Records of findings and other decisional information should not be released to the OR without DOE approval, although review is appropriate.

f. Access to areas where testing and other data gathering activities or construction activity, including drilling activities forming part of site characterization, is ongoing shall be provided to the OR in the same manner as those project personnel working in the area, if necessary safety/security training has been received by the OR and appropriate safety and security provisions are met. This ready access is agreed to in paragraph 7. Discussions with non-supervisory personnel shall be limited unless arranged with DOE or appropriate supervisors in accordance with paragraph 2. Communication with personnel which is not of a technical nature, but is logistically necessary to review the activities in any area, including pertinent current records of the activities, for example, laboratory notebooks or pertinent procedures, or is pertinent to safety is appropriate and can be accomplished without first clearing with supervisory personnel as is required for technical discussions which take significant time and could disrupt the personnel in accomplishing their work.

The purpose of the restrictions on interactions with project personnel identified in paragraph 2 is assure orderly accomplishment of assigned duties and not to inhibit or abridge eventual discussion when time permits. In general personnel and supervisors should attempt to accommodate the OR's technical questions or discussions when they would take less than 10

minutes. Given the large scope of the OR's review, interaction with any particular contractor personnel will be minimal and the total time involved with the OR will be inconsequential from a standpoint of interrupting productive effort. It should be the objective of the training to communicate this idea to foster cooperation and openness with contractor and DOE personnel.

f. Information, which is in DOE or contractor files and which has been obtained by agreement with providers that it remain proprietary, is available for review, if the OR agrees in writing on a case basis to observe the proprietary nature of the information and conditions of the proprietary agreement would allow OR review. Classified information pertinent to the repository licensing, if any, is available to the OR for review if his "Q" clearance is sufficient to allow access. In general information which could be made available to DOE should be made available to the OR for review purposes.

g. Paragraph 1 covers attendance at meetings. This item is intended to provide for attendance at all technical meetings related to site characterization including those associated with repository system design and construction, since site characterization plans hinge on the repository design and construction. The intent is to allow review of the process and decision making as well as to facilitate cognizance and understanding of pertinent facts and plans. Meetings on technical matters are part of the design process. Meetings which are strictly administrative and do not entail design information would not normally be open to the OR unless the administrative issues being discussed were relative to administrative controls called for by QA criteria.

Meetings which address issues related to licensing proceedings and other interactions with the NRC are also meetings, which although not specifically addressed by Appendix 7, will allow the OR to appreciate issues in this area and to identify concerns which could potentially delay licensing. In this regard the current agreement to provide OR access to training sessions of the RHO personnel is in the spirit of the DOE/NRC agreement to cooperate in exchanging information and in general to facilitate communications as provided for in the first paragraph of the Morgan/Davis Procedural Agreement and under item 1, NRC On-Site Representatives.

Attendance at meetings concerning NRC interactions and licensing strategy is also in the spirit of the intent to assure cooperation in the overall licensing endeavor identified in that Procedural Agreement. Restriction from such meetings could suggest to personnel that there is an "us against them" position. This should be avoided. The intent is to assure a smooth licensing with minimal contention. There should be no hidden thoughts in the strategy associated with licensing. If there are misunderstandings these should be highlighted early for formal

resolution. This is best accomplished when strategies are being formulated. Hence OR access to "technical and licensing strategy" meetings is important.

h. Many meetings among contractor personnel or among DOE and contractor personnel are not noticed to the OR. Hence the 24 hour advanced notification of the OR's desire to attend per paragraph 1 is not possible. Notification of cognizant supervisory contractor personnel or DOE project personnel participating in the meeting is sufficient. If, such personnel do not believe the meeting is appropriate for the OR to attend, he should be so advised and will upon such advice leave or not attend the meeting. He may raise the issue of attendance to higher management if so desired, per the provisions of paragraph 1. However, since most meetings pertain to technical issues and/or relate to licensing, attendance should be permitted.

i. Attendance at meetings is in the context of being an observer. If questions are asked of the OR or he is requested to comment on a particular concern, his responses are appropriate and consistent with providing rapid feedback of information to project personnel. However, they should be considered informal responses and not in any way binding. He should not participate in a meeting unless asked. Actions which are subsequently taken as a result of the information or concern identified by the OR are strictly voluntary on the part of the program participant and at no time should they be considered per the direction of the OR. Paragraph 5 of Appendix 7 addresses this informal nature of the information provided by the OR.

Sincerely,

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F. Robert Cook
Senior On-Site Licensing
Representative, BWIP
Division of Waste Management
Office of Nuclear Material Safety
and Safeguards

copy to:
→ R. Carter
J. Mecca
J. Graham

Appendix 1 - BWIP

1. Points of contact between NRC and DOE projects

a. Formal Communications

BWIP Project Manager to and from NRC BWIP Project Section Leader

<u>DOE</u>	<u>NRC</u>
Project Office Manager U.S. Department of Energy Richland Operations Office BWI Project Office P.O. Box 550 Richland, WA 99352	Section Leader BWIP Project Section Division of Waste Management U.S. Nuclear Regulatory Commission 7915 Eastern Avenue Silver Spring, MD 20910

b. Technical Communications

<u>Area</u>	<u>NRC</u>	<u>BWIP Staff/ Contractors</u>
Performance Assessment	Salt Project Section Leader or designee	R. T. Wilde
Repository Design	Mining, Geoengineering Facility Design Section Leader or designee	R. J. Gimera
Quality Assurance	BWIP Project Section Leader or designee	M. S. Karol
Geology	Geology/Geophysics Section Leader or designee	S. M. Price
Geochemistry	Geochemistry Section Leader or designee	P. F. Salter
Hydrogeology	Hydrology Section Leader or designee	G. S. Hunt
Waste Package	Materials Engineering Section Leader or designee	M. J. Smith
General	BWIP Project Section Leader or designee	J. Mecca

Appendix 2 - SRPO

1. Points of contact between NRC and DOE projects

a. Formal Communications

Salt Repository Project Office (SRPO) Manager to and from NRC Salt Project Section Leader

<u>DOE</u>	<u>NRC</u>
Manager Salt Repository Project Office U.S. Department of Energy 505 King Avenue Columbus, OH 43201	Section Leader Salt Project Section Division of Waste Management U.S. Nuclear Regulatory Commission 7915 Eastern Avenue Silver Spring, MD 20910

b. Technical Communications

<u>Area</u>	<u>NRC</u>	<u>SRPO Staff/ Contractors</u>
Quality Assurance	BWIP Project Section Leader or designee	TBD
Performance Assessment	Salt Project Section Leader or designee	TBD
Waste Package	Materials Engineering Section Leader or designee	TBD
Repository	Mining, Geoengineering Facility Design Section Leader or designee	TBD
Exploratory Shaft	Mining, Geoengineering Facility Design Section Leader or designee	TBD
Geology	Geology/Geophysics Section Leader or designee	TBD
Hydrology	Hydrology Section Leader or designee	TBD
Geochemistry	Geochemistry Section Leader or designee	TBD

Appendix 3 - NNWSI

1. Points of contact between NRC and DOE projects

a. Formal Communications

NNWSI Project Manager to and from NRC NTS Project Section Leader

<u>DOE</u>	<u>NRC</u>
Director, Waste Management Project Office DOE Nevada Operations Office P.O. Box 14100 Las Vegas, NV 89114	Section Leader NTS Project Section Division of Waste Management U.S. Nuclear Regulatory Commission 7915 Eastern Avenue Silver Spring, MD 20910

b. Technical Communications

<u>Area</u>	<u>NRC</u>	<u>NNWSI Staff/ Contractors</u>
Quality Assurance	BWIP Project Section Leader or designee	Michael Spaeth, SAI
Performance Assessment	Salt Project Section Leader or designee	Thomas Hunter, SNL
Waste Package	Materials Engineering Section Leader or designee	Larry Ramspott, LLNL
Repository	Mining, Geoengineering Facility Design Section Leader or designee	Thomas Hunter, SNL
Exploratory Shaft	Mining, Geoengineering Facility Design Section Leader or designee	Donald Oakley, LANL
Geology	Geology/Geophysics Section Leader or designee	William Dudley, USGS
Hydrology	Hydrology Section Leader or designee	William Dudley, USGS
Geochemistry	Geochemistry Section Leader or designee	Donald Oakley, LANL

Appendix 4 - CPO

1. Points of contact between NRC and DOE projects

a. Formal Communications

DOE

Manager
Crystalline Repository
Project Office
DOE Chicago Operations Office
9800 South Cass Avenue
Argonne, IL 60439

NRC

Chief, Repository Projects Branch
Division of Waste Management
U.S. Nuclear Regulatory Commission
7915 Eastern Avenue
Silver Spring, MD 20910

b. Technical Communications

TBD

2. Other Project-Specific Features

Consistent with the provisions of Section 1 of the Procedural Agreement, the NRC Onsite Representatives (OR) for the CPO will be stationed following area-phase field work. Thus, the provisions of this project specific agreement related to ORs are not applicable until the OR is on-site. It may be in both agencies' interests to arrange for an OR and hold technical meetings prior to completion of area-phase field work; this will be evaluated periodically.

Pending completion of the area-phase field work, the CPO will be exempt from the quarterly management meetings required under section 2.b of the Procedural Agreement. Until that time, management meetings will be held only as necessary.

Appendix 5

ACQUISITION OF SITE-SPECIFIC SAMPLES DURING SITE INVESTIGATION AND SITE CHARACTERIZATION BY NRC CONTRACTORS

Nuclear Regulatory Commission (NRC) contractors need, in some instances, site-specific samples of rock, minerals, and ground water or brine from sites being studied by the Department of Energy (DOE) as potential geologic repositories for high-level radioactive waste. The NRC contractors need such samples to carry out selected independent site-specific investigations and relevant research supporting the NRC's licensing responsibilities. The DOE will support these projects with site-specific samples to the extent practicable.

In order to facilitate satisfying NRC requests for site-specific samples with a minimum of inconvenience to all parties, the following points are agreed to:

1. Each DOE field project office will identify their designee to the respective NRC Project Section Leader and, where available, the NRC onsite representative (OR), for all communication concerning the procurement of site-specific samples by NRC contractors.
2. Written requests to the DOE for site-specific samples for NRC contractors will originate from the NRC Project Section Leader and will be transmitted by letter to the DOE field project office manager for that site in sufficient time for the DOE to review the request and, if approved, to prepare the sample. A copy will be provided to the OR when one is assigned for the site. The DOE field project office designee shall acknowledge receipt of all requests by letter.
3. The DOE retains the right to decline requests in cases where the requested samples are needed by the DOE to fulfill its site characterization responsibilities, when the requested samples are scarce or prohibitively expensive to collect, or when the request seriously impairs the DOE's schedule or program for site characterization. See also points 10 and 11 concerning management resolution of any problems on this point.
4. In order to assure that appropriate samples will be available prior to transmitting a written request, the NRC Project Section Leader, or designee, should consult with the DOE field project office designee for the particular site as to sample availability. Inquiries on sample availability can be answered on the basis of current site inventory records. If samples are not available, the DOE will arrange for their acquisition providing such requests are within the DOE plans for site investigation and site characterization. See point 6 below.
5. All written requests for samples shall include pertinent information such as the name of the laboratory, the designated laboratory contact, the timeframes within which samples are needed and testing will be performed and the date that any uncontaminated core samples that have not been destroyed by planned testing will be returned. An

example of a sample request form is attached. To the extent practicable, the request should be accompanied by documents that explain the purpose of the tests such as the NRC statement of work for the project, a written description or specification for the testing procedure to be used, any special sample collection, preservation, handling, or transportation requirements, and expected methods for interpretation of results. This will help ensure that the samples provided by the DOE are appropriate for the tests planned by the NRC contractor. The NRC-approved quality assurance program for the laboratory performing the investigation shall accompany all initial NRC requests for samples for that laboratory.

6. All requests for samples not already available, e.g., core from new boreholes, must sufficiently precede the NRC contractor's need so that samples can be collected within the DOE's site characterization program and at a reasonable convenience to DOE field project offices. The DOE will provide as much flexibility in scheduling sample collection and responding to requests as possible within current program schedules. Accordingly, for samples not already available or planned for under the DOE's plans, adequate advance notice will be needed to incorporate the request for new samples into the site investigation and characterization program. This advance notice must also allow for preparation and submittal to the State for an application for authorization, where required, to remove the sample from the State and for securing the necessary approval.
7. The DOE field project office designee will provide a sample description document with the sample(s) to assist the NRC contractor in ascertaining the compatibility of the sample with the specific test. The sample description document shall provide pertinent information on the sample, such as sample designation, data collected, date collected, description of sample, person collecting sample, depth collected, stratigraphic unit sampled, sampling techniques and conditions, initial measurements of properties at the time of sample collection, results of any subsequent tests or measurements, any methods of preservation or special handling, and proposed method of shipment to the NRC contractor. The NRC should identify any special methods and conditions for shipping samples.
8. The NRC contractor will normally return to the DOE facility that furnished the sample, through the NRC Project Section Leader, a reciprocal sample description document with pertinent information such as sample designation, a description of the sample as received, preparation or treatment of the sample prior to testing, initial readings prior to testing, any modifications to testing procedure or apparatus, testing results, quality control checks, significant observations during testing, interpretation of test results, and disposition of sample(s) after testing. Uncontaminated core samples that have not been destroyed by planned tests will be returned to the DOE as soon as practicable after use.

9. In implementing each of the above provisions, there should be a free exchange of information. Telephone communications to coordinate activities and discuss sampling schedules and testing are encouraged between the NRC or NRC contractors and designated DOE representatives. Requests for actions requiring significant expenditure of DOE or DOE contractor man-hours must be made in writing by the NRC Project Section Leader.
10. The DOE will pay reasonable costs associated with sample collection, preservation, handling, and transportation. The DOE field project office designee will identify any extraordinary costs which may require resolution on a case-by-case basis under point 11.
11. The DOE field project office designee will identify any requests which cannot be met, including the basis for such conclusions, to the DOE field project office and NRC Project Section Leader for resolution on a case-by-case basis at the next management meeting as specified under Section 2b of the Procedural Agreement.

SAMPLE REQUEST FORM (CONTINUED)

Time Frame

Date Samples Needed _____

Time Required to Complete Testing/Analysis _____

Time Required to Publish Results _____

Format of Results _____

Objectives of Tests to be Performed _____

Test Method _____

Use/Need for Test Data/Information in Geologic Repository Program _____

Preparation, Packaging, Transportation Requested

Preparation Procedure _____

Packaging Procedure _____

Transportation Procedure _____

Sample to be Shipped to:

Name _____

Organization _____

Address _____

Telephone _____

Comments: Also, please attach any additional materials, such as test plans.

SAMPLE REQUEST FORM

Please type or print

Date of Request _____

Requester: Name _____

Organization _____

Address _____

Telephone _____

Is Requestor a DOE Project Subcontractor? Yes _____ No _____

If yes: Contract Number _____

Expiration Date _____

If no: Funding Source _____

Contract Number _____

Expiration Date _____

Samples Requested

Core Sample(s)

Well ID _____

Depth Interval Requested _____

Full Core _____ Half Core _____ Quarter Core _____ Other _____
Soil Sample(s)

Well ID _____

Sample Type: Shelby Tube _____ Drive _____ Pitcher _____ Bulk _____ Other _____

Depth Interval Requested _____

Quantity _____

Water Sample(s)

Well ID _____

Depth Interval Requested _____

Quantity _____

SAMPLE REQUEST FORM (CONTINUED)

Time Frame

Date Samples Needed _____

Time Required to Complete Testing/Analysis _____

Time Required to Publish Results _____

Format of Results _____

Objectives of Tests to be Performed _____

Test Method _____

Use/Need for Test Data/Information in Geologic Repository Program _____

Preparation, Packaging, Transportation Requested

Preparation Procedure _____

Packaging Procedure _____

Transportation Procedure _____

Sample to be Shipped to:

Name _____

Organization _____

Address _____

Telephone _____

Comments: Also, please attach any additional materials, such as test plans.

Appendix 6

STANDARD FORMAT
FOR MEETING REPORTS

DATE/LOCATION OF MEETING

ATTENDEES/ORGANIZATIONAL AFFILIATION

BACKGROUND/FACTS

1. What information was reviewed, exchanged, and discussed (Summary listing fashion)
2. What agenda of discussion was

OBSERVATIONS

1. NRC questions, suggestions, or comments on scope and direction of the DOE technical program. (Best attempt made to identify all important matters)
2. DOE observations
3. State/Tribal observations (an opportunity will be given to States/Tribes to made observations on the DOE technical program)

AGREEMENTS

OPEN ITEMS

1. Technical questions for further discussion
2. Specific responsibilities for information exchange and commitment on other business matters.

Appendix 7

AGREEMENT CONCERNING THE NRC ON-SITE REPRESENTATIVE (OR)
FOR THE REPOSITORY PROJECTS
IN THE SITE SUITABILITY AND PLANNING PHASE

- T B D -

*Appendix 7 (now
attached)
dated - June 27/85*