



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

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MEMORANDUM FOR: Robert E. Browning, Director
Division of Waste Management

FROM: Michael J. Bell, Deputy Director
Division of Waste Management

SUBJECT: CONCURRENCE ON PROPOSED PROCEDURAL AMENDMENTS
TO 10 CFR PART 60 DEALING WITH SITE CHARACTERIZATION
AND THE PARTICIPATION OF STATES AND INDIAN TRIBES

I have concurred in the subject document despite the memorandum to you from J. O. Bunting dated February 9, 1984. The purpose of this memorandum is to explain my views on issues raised in that memorandum, and why I have concurred in light of these issues.

The February 9 memorandum states that no significant changes are required to conform to the Nuclear Waste Policy Act (Waste Act). This statement overlooks the section by section analysis in Enclosure A of the Commission paper, which points out in detail needed changes to the procedural rule in light of the Waste Act. Examples are: the definition of affected Indian tribes, duplication by NRC of provisions in the Act for DOE to provide notification of meetings and documents to the States/Indian tribes and the need for NRC to concur in the use of radioactive material by DOE as part of site characterization. The proposed changes also incorporate the requirements for NRC to keep the states informed of our activities in accordance with §117(a) of the Waste Act. The option of no change in Part 60 was considered in the regulatory analysis (Enclosure E) included in the rulemaking package, but was rejected because it could result in inconsistencies between Part 60 and the Waste Act. Failure to make Part 60 consistent with the Waste Act could lead to costly and time consuming inefficiencies later in the licensing process when it could be more disruptive. Making the changes now may consume some staff resources but will make us less vulnerable to challenge at the time of licensing. I consider this to be responsive to Mr. Davis' desire to resolve issues early and to the Commission's program and planning guidance to not delay the administration's program in the absence of unresolved safety issues.

The rulemaking document clearly states in several places in Enclosure A that the purpose of the changes is not to reduce opportunities for consultation by states/tribes with NRC. It specifically requests comment on whether the proposed changes have inadvertently affected these

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opportunities. The only significant change in this regard is reduced opportunity for funding proposals for state participation, which were very limited even in the existing rules, and which the states fully recognize based on our discussions with them over the last year.

My views on the two numbered paragraphs in the February 9 memorandum are:

1. Alternative Sites for Characterization

There is nothing in the paper to suggest that the revised procedures would not result in selecting a site for licensing from "among a slate of sites that are among the best that can reasonably be found." There appear to be several misunderstandings concerning this item in the February 9 memo.

In the final procedural rule, the Commission stated it was the process of multiple site characterization that would lead to such a slate of sites, not NRC review of the earlier screening process. This aspect of the licensing procedures is unchanged. There also appears to be an interpretation that only geologic factors should be considered in selecting sites, and that factors such as prior land use were not pertinent. As stated in the supplementary information for the final technical rule, DOE has the freedom to consider other factors such as land use, environmental and socioeconomic impacts, and cost of obtaining land, mineral and water rights.

The February 9 memo appears to assert that the site selection process specified in the Waste Act is incapable of leading to "a slate of sites among the best that can be found." However, if sites are selected using the procedures specified in the Waste Act, and using guidelines that the Commission has concurred in, it is likely that a reviewing court would find this standard to be met.

There also appears to be a misunderstanding that in not commenting on DOE's methodology for selecting and comparing sites, the NRC staff would not comment on technical uncertainties in the sites nominated. As stated in the rulemaking package, the NRC staff would comment on the potential licensing issues in its comments on draft environmental assessments. More importantly, we would comment at the stage before the recommendation to the President of the three sites to be characterized, so that the Secretary and the President

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can consider the potential licensing issues in selecting sites for characterization. The present rule would have us reviewing the site selection process after the President's decision, when it would be potentially disruptive to the national program, if new licensing issues were identified at this late stage. Again, I believe the proposed revisions to be responsive to the Commission's program and planning guidance.

2. Approval of Proposals

The intent of the new criterion for approval of proposals is not to preclude a relationship between NRC and the states/Indian tribes. Rather, it is to provide a basis to deny proposals that involve NRC funding of activities that DOE is authorized to fund under the Waste Act. We believe the proposed change is consistent with the intent of the Act which was to fund such activities out of the Waste Fund. This intention is clearly pointed out in the rulemaking paper.

I consider that the Commission paper does adequately point out that there are differing views on the scope of our review of the draft Environmental Assessments and that there are major resource as well as policy implications. My view is that the paper, as written, informs the Commission of all the relevant issues and risks. The paper is long overdue and the best way to resolve these policy issues is to have it reviewed by the Commission and to allow the public the opportunity to comment. Based on these considerations, I have concurred and recommend that you do likewise.

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