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TESTIMONY OF WILLIAM DIRCKS, DIRECTOR
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UNITED STATES NUCLEAR REGULATORY COMMISSION

BEFORE

THE SUBCOMMITTEE ON ENERGY, NUCLEAR
PROLIFERATION AND FEDERAL SERVICES
COMMITTEE ON GOVERNMENTAL AFFAIRS

FEBRUARY 13, 1980

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I am pleased to have the opportunity to testify before your Subcommittee on the proposal for a Nuclear Waste Management Reorganization Act.

Like the authors of this legislation, we believe a carefully articulated decision-making process is crucial to the success of federal efforts to find a technically sound and publicly acceptable solution to the waste problem with a minimum of delay. One need only review the failures in Kansas and Michigan to confirm the need for significantly improved procedures for State and local involvement in this decision-making process. If the public was skeptical then, it is likely to be even more so now that pressures for a solution are greater and the shortcomings of early federal efforts are a matter of record. The proposed Nuclear Waste Management Reorganization Act clearly recognizes this serious problem of public confidence and attempts through the legislative process to deal with it.

Last year, the Commission assigned a high priority to the development of high-level waste performance criteria and licensing procedures that would also address this problem. A draft high-level waste management regulation (10 CFR Part 60) is under development by the NRC. The procedural portion of this draft regulation was published for public comment in the Federal Register on December 6, 1979. We expect to publish a draft companion regulation covering the technical criteria in mid-1980 and to finalize the entire rule after incorporating public comment by the end of 1981.

We are pleased to find that the revised draft of S. 742 reflects the essential provisions in our proposed high-level waste regulation.

I will attempt to keep my opening remarks short and address the questions raised in your letter of January 31, 1980. It might be useful, however, to describe briefly our proposed regulation in order to show how the procedural portions complement the revised draft of S. 742.

Under our proposal, the States would be able to participate through four stages of the actual repository licensing process. The first stage, which is advisory, begins when the Department of Energy (DOE) wishes to start subsurface characterization of a specific site or sites for a prospective repository. At this point, DOE would be expected to submit a site characterization plan to the Nuclear Regulatory Commission (NRC). This document would include a description of the site to be characterized, a description of the characterization program including in-situ tests, criteria used in selecting the site for characterization, and an identification of alternative media and sites for which DOE plans to submit subsequent characterization reports. By site characterization, we include, as does the revised draft of S. 742, the sinking of an exploratory shaft, limited lateral borings, and in-situ testing at the planned depth of waste emplacement. NRC would notify the affected States of the actions proposed in the plan, review it, and give these States and the public an opportunity to comment on both the plan and NRC's analysis. NRC would expect

DOE to involve State and local governments in its site selection program, which precedes site characterization, and the site characterization plan would include a description of this involvement.

The Director of the Office of Nuclear Material Safety and Safeguards (NMSS) would issue an advisory opinion to DOE as to the adequacy of the plan, considering as part of his opinion both State and public comment. These site characterization activities would constitute an informal conference between a prospective applicant and the NRC staff, and would not be part of the formal proceeding under the Atomic Energy Act. If the Director made a negative finding on the plan, DOE would not be required to amend it before proceeding. However, by proceeding without a positive finding on the sites DOE would face a greater possibility that construction of the facility would not be authorized by NRC.

We are pleased to see that the revised draft of S. 742 incorporates site characterization provisions similar to these set forth in our proposed procedural rule. In the draft legislation, States are provided the opportunity to participate in the review and preparation of the "Proposed Site Report" at the completion of the site characterization stage. This feature of the revised draft complements our proposed procedural rule. We plan to involve the States in each site characterization before significant work is undertaken by DOE while the revised draft S. 742 would provide for State involvement at the completion of the site characterization process.

The second stage under our proposed regulation would begin with the submission by DOE of a license application for a particular site. At this point, several sites would have been characterized, some sites might

have been rejected, and a primary site would have been selected, with the remaining acceptable sites banked for possible future use. Formal licensing proceedings would begin at this stage; a licensing board would be appointed, and the license application would undergo its first review. Construction would not begin until NRC granted the authorization to DOE. It should be noted that the Atomic Energy Act affords affected States the opportunity to participate as parties to formal NRC proceedings. The revised draft of S. 742 would provide the States an additional opportunity to express their views on the Repository Development Report both to DOE and directly to Congress.

The third stage, which would precede issuance of a license by NRC to receive waste at the repository, would commence when the repository has been substantially completed. States would have another opportunity to participate in the NRC proceedings under the proposed regulations as well as under your proposed legislation. The revised draft S. 742 provides for States to express their views on the Repository Loading Report both to DOE and directly to Congress.

The fourth stage in the proposed NRC licensing procedure is the closure of the repository. Once all the wastes have been emplaced, DOE would submit an application to amend the license to authorize closure of the repository. The States and the public would have another opportunity to participate at this stage.

With your permission, Mr. Chairman, I would like to insert for the record the pertinent pages of the Federal Register of December 6, 1979, containing our draft procedural rule on licensing of high-level waste repositories. They describe in somewhat greater detail the State participation that we envision in our proceedings. This rule, of course, is in draft form and is subject to revision by the NRC in light of comments received.

We are pleased that you have shown a particular interest in our comments on the timing and mechanism of Congressional review, as this question is fundamental to the development of a process that equitably balances State and national interest. Since our report to Congress last March on "Means for Improving State Participation in Siting, Licensing, and Development of Federal Nuclear Waste Facilities," the Commission has recommended that Congress establish a means for resolving State objections to a proposed repository. Our report, published as NUREG-0539, did not express a preference for any particular mechanism by which this resolution should take place, but we did suggest a few things about its timing.

We do not believe that a State should be allowed to impose a flat prohibition on high-level waste disposal before the characteristics of any particular site within the State could be determined, because

sites might then be selected less for their technical soundness than their political acceptability. We do believe, however, that normal State authority to set standards for the approval of facilities within its borders should not be preempted until it is clear that preemption is necessary to a clearly defined national interest. We have therefore concluded that if a State were to continue to object after careful examination of the record of health, safety, and environmental considerations, after consultation with DOE, and after participation in NRC licensing proceedings, the process should be suspended pending a review either by Congress, the President, or both.

This is our interpretation of the notion of "consultation and concurrence;" it should encourage the State and DOE to negotiate their differences in good faith, because their arguments would ultimately be judged by a third party according to a record of the facts and the negotiating parties' mutual efforts to account for them. By this logic, any State objection should not trigger Congressional or Presidential review until the record has been completed.

We therefore recommended that the opportunity for State non-concurrence be provided after the Commission had decided to authorize facility construction. Thus, the State decision would come before a substantial 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. Parenthetically, I would like to point out here that if these objections were resolved and repository construction were subsequently allowed to proceed, our decision to license receipt of the

waste would still be subject to the full formal proceedings which we normally provide under federal law.

In evaluating and developing recommendations on the Department's repository siting proposals, a potential host State and any directly and substantially affected adjacent States should be able to request and receive the advice and assistance of the Nuclear Waste Management Planning Council. This function of the Council has not been explicitly set forth in either S. 742 or the amended draft Bill, and may be subject to doubt.

The revised draft Bill does make several important improvements in the proposed Interagency Nuclear Waste Coordinating Committee. By striking the authority of DOE as Committee Chairman to resolve differences of views among Committee members, by providing for the submission of options and separate agency views to the President for resolution, and by giving DOE sole responsibility for the preparation of Repository Siting, Development and Loading Reports, the draft makes it clear that the Committee is to be independent of the Department. Since the NRC, as a regulatory body, should avoid even the appearance of potential conflict with its duties, these amendments significantly enhance the opportunity for constructive NRC involvement in the interagency planning and coordinating activities so necessary to minimize duplication of effort.

I hope the foregoing comments provide an adequate response to the questions in your letter of invitation to testify, Mr. Chairman, and I would be happy to answer any further questions you or other members of the Subcommittee may have.