

## CORRESPONDENCE CONTROL TICKET

Ben Rusche

SECY NUMBER: 85- 755

## OFFICE OF THE SECRETARY

LOGGING DATE 9/4/85

ACTION OFFICE: EDO

AUTHOR: Ben Rusche

AFFILIATION: Department of Energy

LETTER DATE: 8/29/85

ADDRESSEE: Rep John Dingell

SUBJECT: Expresses DOE's position re preliminary determination relating to suitable sites for development as repositories

ACTION: Appropriate

DISTRIBUTION: RF

SPECIAL HANDLING: cc: Palladino

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1) Davis  
2) Mausshardt  
cc: WMFOR THE COMMISSION ChampRec'd Off. EDO  
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Time... 1:45 p.m.WM Record File  
123

WM Project 1

Docket No.

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## Department of Energy

Washington, DC 20585

AUG 29 1985

Honorable John D. Dingell  
Chairman  
Committee on Energy and Commerce  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter of July 26, 1985, providing me with your views regarding the timing of the preliminary determination referred to in section 114(f) of the Nuclear Waste Policy Act of 1982 (the Act). As you noted, the Mission Plan specifies that this preliminary determination will be made by the Secretary at the time that he recommends three sites to the President for detailed site characterization. In your letter you expressed a different view of when the preliminary determination should be made, and although it appears we do not agree, I appreciate this opportunity to further explain the Department's position.

CHAIRMAN-REC'D I think the one thing that we may agree on is that the Act does not specify when the preliminary determination must be made. As you are aware, there continues to be a variety of views on the appropriate timing. Recognizing that the timing is not specified in the Act and that there are alternative points in the process when the preliminary determination could be made, it is clear that the Act left the precise timing of this determination to the discretion of the Secretary. The decision on the timing that is expressed in the Mission Plan reflects a thorough consideration of alternative points in time that the preliminary determination could be made, including the alternatives discussed in your letter.

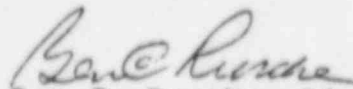
In explaining why it was decided to make the preliminary determination at the time of recommending sites for characterization, let me first note that, under the Act, a preliminary determination must be made on a site that is at the time of selection "not unsuitable," i.e., it is suitable based on the information, data, and analysis then available. Further, the Act requires that the preliminary determination be made on three candidate sites. As discussed in the Mission Plan, the purpose of the preliminary determination is to ensure the reasonableness of the alternate sites considered--to add assurance that the three sites selected for characterization have a high potential for being found suitable for development as a repository. This preliminary determination will add confidence that the three

alternate sites considered in the environmental impact statement required by section 114(f) of the Act will, in accordance with the National Environmental Policy Act, constitute reasonable alternatives. The requirement of the Act to select three sites for characterization provides a considered balance between the need to assure technical quality and safety in the finally selected repository site and the need to proceed expeditiously and in a cost-effective manner.

The above purpose is served by having the recommendation of sites for characterization based on a preliminary determination of suitability for development as repositories. Furthermore, it gives meaning to an evaluation that is required by section 112(b)(1)(E) to be included in the environmental assessments. Under that section, the environmental assessments that accompany site nominations are to include, among other things, (1) an evaluation as to whether the site is suitable for site characterization and (2) an evaluation as to whether the site is suitable for development as a repository. Each of these evaluations is to be based on the guidelines promulgated under section 112(a). For the nominated sites, the Secretary will use the first evaluation to support the required finding that those sites are suitable for characterization. Subsequently, for recommendation, he will be able to use the second evaluation and any other available information to make the "preliminary determination" referred to in section 114(f) that the recommended sites are suitable for development as repositories. These second evaluations in the environmental assessments would serve no purpose unless they are used to support a preliminary determination for each of the recommended sites.

In conclusion, the Act left the timing of the preliminary determination to the discretion of the Secretary, and making this determination at the time of recommendation is both reasonable and in compliance with the Act. I appreciated receiving your views on this matter and the opportunity to explain the position taken in the Mission Plan.

Sincerely,



Ben C. Rusche, Director  
Office of Civilian Radioactive  
Waste Management

cc: The Honorable Nunzio J. Palladino  
The Honorable Thomas M. Roberts  
The Honorable James K. Asselstine  
The Honorable Frederick M. Bernthal  
The Honorable Lando W. Zech, Jr.