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Carl Sinderland

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September 10, 1985

The Honorable Nunzio J. Palladino
Chairman
United States Nuclear Regulatory Commission
1717 H Street, NW
Washington, DC 20555

Re: Preliminary Determination of Site Suitability Under
Section 114(f) Of The Nuclear Waste Policy Act of 1982,
42 U.S.C. Sec. 10134(f)

Dear Mr. Palladino:

On behalf of the State of Wisconsin, I would like to thank you for the opportunity to appear before the Commission this past Friday, September 6, 1985, regarding the Department of Energy's (DOE) preliminary determinary of site suitability. By this letter, we are documenting the positions stated by the State of Wisconsin at that hearing.

We would like to initially observe that the interests of the State of Wisconsin in repository development program mandated by the Nuclear Waste Policy Act (NWP) extend beyond DOE's consideration of rock bodies in Wisconsin for a second repository. Wisconsin has made a substantial investment in nuclear power and relies upon electricity generated by four reactors within its borders. We are keenly aware of the limited spent fuel storage capacity at these and other reactors and the importance of timely development of a safe and environmentally sound repository. Contrary to the innuendoes of industrial representatives who appeared at the hearing, our comments and activities are motivated by the principle that the integrity and acceptability of the repository program are best protected if key decisions are made on the basis of hard evidence and close consultation among interested parties.

The Commission's hearing was precipitated by DOE's present interpretation of sec. 114(f) of the NWP, 42 USC sec. 10134(f), that the preliminary determination of site suitability may be made prior to any site characterization activities, and that the NWP requires that DOE find only one suitable site for purposes of sec. 114(f). This interpretation, reflected in the Mission Plan, Vol. I, at 63-64, is a substantial departure from the

commitment made to the Commission at the June 22, 1984, hearing which resulted in the Commission's concurrence in the Siting Guidelines. Moreover, this interpretation conflicts with the terms of the NHPA, is inconsistent with DOE's program as it affects a second repository and has significant adverse practical ramifications.

A fair reading of the NHPA supports but one interpretation: that the preliminary determination of site suitability under sec. 114(f) is designed to ensure that there are three suitable sites at the point in time that the environmental impact statement (EIS) is prepared. Structurally, the analyses and procedures required to support nomination and recommendation for characterization, including an initial analysis of site suitability, are set forth in sec. 112. Procedures applicable to characterization of the recommended sites are found in sec. 113. Sec. 114 is devoted to the procedures and analyses necessary to support the selection of a site for development as a repository, after characterization has been substantially completed. Moreover, sec. 114(f) is designed to ensure compliance with the National Environmental Policy Act, which requires the consideration of alternatives.

In addition to the structure of the NHPA, basic rules of statutory construction require that each provision in the statute has an independent meaning. If the preliminary determination under 114(f) is made prior to characterization, it is redundant to the suitability analysis required by sec. 112(b)(1)(E)(i) and (ii). Likewise, the requirement in sec. 114(f) that each of the three sites has been characterized would, under DOE's interpretation, render the separate preliminary determination requirement superfluous. Finally, sec. 113(c)(1) clarifies that the very purpose of site characterization is to determine the "suitability" of the site for development of a repository.

The manner in which DOE is administering its program for selection of a second repository also mandates that there are three suitable sites after characterization. As Mr. Olmstead of your staff observed, secs. 112(b)(1)(C) and 114(f) provide that the characterized sites not selected for the first repository are eligible for a second repository, reflecting Congressional intent that all three sites must be suitable. Secs. 112(a), 113(a) and 301(a)(5) require that DOE consider alternative host media for each repository. Since DOE is presently considering only crystalline rock bodies for a second repository, it is evidently relying upon the two remaining characterized sites to provide the required diversity of media.

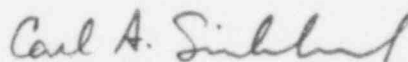
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DOE's change in position also has practical ramifications which may seriously undermine public confidence and ultimately delay selection of a repository. We have consistently maintained that the quality of data required for nomination and recommendation of sites for characterization, as reflected in Appendix III to the Siting Guidelines, is inadequate. The preliminary determination requirement, however, has provided additional incentives to insure that DOE selects sites for characterization which have a high probability of remaining suitable after characterization. DOE's concern, reflected in the Mission Plan, that the characterized sites may prove unsuitable, is an indictment of the Siting Guidelines, reflecting a low confidence in its ability to find suitable sites.

This controversy also reflects a philosophical disagreement between DOE and the states. For DOE, the program will succeed if it results in the identification of one site which meets minimum standards of suitability. For the host state, which must ultimately bear the impacts and risks associated with the repository, it will be difficult to accept a site unless it was selected as the best among several suitable sites, in a process designed to select the best possible site. This is particularly true since suitability, even for purposes of licensing, will be premised on modeling and projections and will rely on a largely untested technology.

For these reasons, the State of Wisconsin respectfully urges the Commission to preserve the principle that DOE must make a preliminary determination of site suitability for three sites after characterization, and to retain this commitment as an essential ingredient of its concurrence in the Siting Guidelines.

Sincerely,



Carl Sinderbrand
Assistant Attorney General

CAS:nls

cc: Commissioner Thomas M. Roberts
Commissioner Frederick M. Bernthal
Commissioner James K. Asselstine
Commissioner Lando Zech, Jr.
Mr. Samuel Chilk