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JUN 4 1985

Mr. Robert E. Browning
U. S. Nuclear Regulatory Commission
Division of Waste Management
SS - 623
Washington, D.C. 20555

Dear Mr. Browning:

This letter is in reply to your letter of February 21, 1985 to William J. Purcell concerning Appendix 7 to the DOE/NRC Project Specific Procedural Agreement. Your letter forwarded a proposed version of Appendix 7 to DOE for consideration.

We have reviewed your proposal carefully, both at headquarters and at the repository project offices. While we agree that your proposal incorporates several useful clarifications, we consider that it omits a number of key provisions, many of which were previously agreed upon in the preliminary negotiation conducted by your BWIP on-site representative (OR) and our BWIP project office. We consider the provisions of that agreement of fundamental importance in the relationship of the OR to our Project Offices. Accordingly, we have developed a revised Appendix 7, enclosed with this letter, for your consideration. The enclosed proposed Appendix 7 has been prepared by typing your latest proposed version in entirety, striking out wording which we believe should be deleted, and inserting in brackets wording which should be included. The reasons for the changes which we have made are as follows:

1. Paragraph 1 - Your proposed wording would require that the NRC OR's be allowed to attend any meeting, held by any OGR program participant, no matter how preliminary or unendorsed by program management the subject matter may be. Although we agree with NRC that it is in DOE's interest to allow the NRC OR's to attend as many meetings as possible, we consider that DOE must retain the right to exclude the OR from some meetings - such as those we hold to get our position on an issue worked out internally. Accordingly, we have reinserted provisions for DOE to hold meetings that are closed to the OR's.

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2. Paragraphs 2 and 3 - Your proposed wording would allow the NRC OR's to discuss program business with any individual involved in the program, without informing DOE or the program management at any level. This would create several problems including the following:

- a. Contacts by the OR with contractor personnel without DOE or prime contractor program management being present would almost certainly lead to instances where NRC is understood to be (or is alleged to be) directing the contractor, thus leading to a breakdown in program management and possible contract claims against DOE.
- b. Similarly, uncoordinated contacts by the OR with contractor personnel could result in the OR being provided information (and subsequently making an issue on information) that is wrong, or does not represent DOE's or the contractor's position.
- c. Finally, by conducting such contacts without involving DOE or prime contractor management, the OR would be hindering DOE's ability to gain a benefit from the interaction, limiting such benefit to the information the OR recognizes to be of interest or importance to DOE and takes action to pass on. This contradicts the very purpose of the DOE/NRC prelicensing coordination.

Thus, although we do not object to the OR contacting any individual involved with the OGR program, we consider that such contacts must be coordinated through DOE or prime contractor management, and that the OR should make such contacts with the designated DOE contacts whenever practical to maximize the utility of the contact to DOE. We have reinserted the provisions that require these coordination actions.

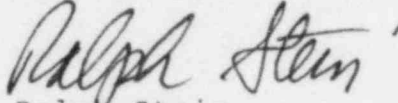
3. Paragraphs 4 and 5 - Your wording would allow the NRC OR's to acquire records and documents from the program prior to their being reviewed and approved by DOE or DOE's prime contractor. This could result in a preliminary document or one undergoing management review appearing in the NRC's PDR.

Thus, although we consider that it is in DOE's interest to share draft or early information with NRC in most instances, DOE must reserve the right to not share a draft or unapproved subcontractor information when necessary. We have reinserted the provisions allowing us to do so.

4. Paragraph 6 - The change we propose to make in this paragraph is simply to remove the ambiguous word "significant".
5. Paragraph 7 - No change.
6. Paragraph 8 - This paragraph is a new section inserted by NRC headquarters. It implements requirements for site access from paragraph 1 of the body of the DOE/NRC project specific agreement. The revisions that we are proposing insert references to identification, security clearance, radiological protection and personnel protection requirements that are also stated in paragraph 1 of the body of the project specific agreement. We have also proposed references to other sections of Appendix 7 to clarify that they apply during site inspection tours by the OR, and have replaced NRC's provision for "immediate access" with provisions that allow NRC access as timely as DOE allows for its own employees.
7. Paragraph 9 - No change.
8. Paragraph 10 - This paragraph requires DOE to inform its employees and contractors of the requirements of Appendix 7 and assure that the requirements are followed. We have modified the requirement to make it applicable to NRC and its contractors as well.

I hope that you will agree with the points discussed above and will join with us in signing Appendix 7 at this time. In anticipation of this event, I have also enclosed a signed version of Appendix 7, revised to incorporate the revisions discussed above.

Sincerely,



Ralph Stein
Director, Engineering and
Licensing Division
Office of Civilian Radioactive
Waste Management

Enclosures:

1. OGR Proposed Appendix 7 of May 29, 1985
(line in - line out version)
2. Appendix 7 (version for signature)

cc: H. Miller, NRC

OGR PROPOSED APPENDIX 7

May 29, 1985

AGREEMENT CONCERNING THE NRC ON-SITE REPRESENTATIVE (OR)
FOR THE REPOSITORY PROJECTS
DURING SITE INVESTIGATION AND CHARACTERIZATION

The purpose and objective of the on-site representative (OR), as identified in item 1. of the Procedural Agreement*, is to serve as a point of prompt informational exchange and consultation and to preliminarily identify concerns about investigations relating to potential licensing issues.

This appendix is intended to supplement the base agreement and to detail the guidelines which will govern interaction between the NRC OR, including any NRC personnel assigned to the OR, and DOE contractor personnel (prime and sub) involved in the project. Any interactions between the OR and DOE, its contractors, or subcontractors identified in this appendix will not constitute "meetings" within the intent of item 2. of the Procedural Agreement and therefore will not require the preparation of written reports and will not be subject to State/Tribal and public notification and participation or scheduler requirements of item 2. of the Procedural Agreement. The interactions of the OR with DOE and its contractors and subcontractors are not intended to interfere with or replace other channels of NRC/DOE communications and procedures for information release identified in sections 2., 3.A, and 3.B. of the base agreement and sections 2., 3. and 7. of the Procedural Agreement.

The following points are agreed to:

1. The OR can attend any meetings on-site or off-site dealing with technical questions or issues related to work required as part of site characterization and site investigation (e.g., any items to be covered in Site Characterization Plans under the Nuclear Waste Policy Act) following notification of the cognizant DOE project representative responsible for the meeting [as discussed below]. Such notification shall be by

*"Procedural Agreement between the U.S. Nuclear Regulatory Commission and the U.S. Department of Energy Identifying Guiding Principles for Interface During Site Investigation and Site Characterization" (48 FR 38701, 8/25/83) herein referred to as the Procedural Agreement.

memorandum, telephone or personal contact and will be given at least 24 hours in advance where DOE has provided adequate prior notification to the OR. The meetings may involve solely DOE or solely DOE's contractors (prime and sub) or any combination of DOE with their contractors. The OR may be precluded from attending only those meetings or portions of meetings which concern budgets, personnel actions or contract performance not dealing with technical/peer reviews and QA audits of contractor's work. [If objections to the OR attendance are voiced for any reason, the reason should be specified. If the OR does not agree with the objection to his attendance, it will be raised to a higher management level for resolution. If resolution cannot be achieved, the OR will not attend the meeting in question.]

- [2. In order to facilitate orderly and useful conduct of the various DOE/NRC information exchanges, the OR contacts with the DOE program shall be made with the DOE and DOE contractor personnel identified in Appendices 1, 2 and 3 of the base agreement whenever practical.]

2. [3.] The OR may communicate orally (in person or by phone) with the project participants (persons) employed by DOE, DOE's prime contractors or the prime's subcontractors, on-site or off-site [providing that the following procedures are followed. The OR shall arrange for all individual sessions with prime contractor and subcontractor staff by contacting the proper prime contractor section or department manager or proper DOE Team Leader]. The OR will avoid discussions with personnel when it would appear to disrupt their normal duties and will schedule a discussion period at a mutually convenient time. The OR will keep DOE or cognizant DOE prime contractor supervisory personnel informed of near term (approximately 1 week) areas for intended review and the project participants who may be contacted. It is the option of DOE or the person contacted by the OR as to whether or not the presence of a supervisor or third party is to be present. [No record of these discussions is required, however questions that are raised or other issues that] Concerns arise as a result of the above interactions and which may affect NRC's ability to license the DOE to receive and possess source special nuclear and by product material at a geologic repository operations area will be reported to the NRC Division of Waste Management and to the cognizant DOE project personnel by the OR as soon as practical.

- 3-[4.] DOE ~~field~~[project] office(s), DOE prime contractors and their subcontractors will provide the OR access to records which would be generally relevant to a potential licensing decision by the Commission [as follows]. Upon request by the OR, the DOE or the DOE contractor or subcontractor shall provide copies of any records of raw data provided that the quality assurance checks specified in section 3.a of the Procedural Agreement have been performed. Records which document the analysis, evaluation, or reduction of raw data or contain information deduced by reason will be made available to the OR, ~~by the entity having the responsibility to produce the record, for copying after the quality assurance checks have been taken to assure the quality of the logie and analysis. Records at any stage of completions shall be available for review but not to copy or to receive a copy for retention until quality assurance checks have been made~~[after the documentation has been peer reviewed by the prime contractor, and cleared and approved by DOE].
- 4-[5.] Drafts of DOE documents required by the Nuclear Waste Policy Act of 1982, such as the EA, and SCP, which have not been approved by DOE, will not be provided ~~by DOE's contractors~~ to the OR without DOE approval. Documents of this type [may] ~~will~~ be made available by DOE, ~~and~~ [but] not the DOE contractor.
- 5-[6.] The OR does not have the authority to direct DOE, their contractors or subcontractors to perform any work. Any formal identification of questions or issues for investigation by DOE that could result in ~~significant~~ contractor or subcontractor work must be formally presented to DOE through the NRC Division of Waste Management in writing.
- 6-[7.] The OR will attend on-site meetings upon request by the DOE ~~field~~[project] office or prime contractor on-site whenever possible. The OR will provide any records which would normally be available under 10 CFR Part 2.790 of the Commission's regulations to project participants upon request to copy. If convenient, copies of such records will be provided by the OR.
- 7-[8.] The OR shall be afforded access to the site, research facilities, and other contractor and subcontractor areas to observe testing or other data gathering activities, in progress, as part of site characterization and site investigation [subject to compliance with the applicable requirements for identification, and applicable access

control measures for security, radiological protection and personnel safety, provided that such access shall not interfere with the activities being conducted by DOE or its contractors (see point 6 above) and that any discussions conducted during such access shall comply with point 2 above.]

Such access shall be ~~immediate~~ [allowed as rapidly as it is for DOE or DOE contractor employees] upon display of an appropriate access identification badge, or, if badging is not possible for national security reasons, upon prior notification to DOE or cognizant contractor supervisory personnel (by memorandum, telephone or personal contact). When an access identification badge is available to DOE or DOE's contractors and subcontractors on a routine basis, it shall be made available to the OR upon completion of the required security clearances and appropriate radiological and personnel safety training. DOE will ensure that any training required is provided to the OR.

8-[9.] The OR and DOE will make arrangements which allow for at least weekly information exchanges to discuss pending DOE plans and program status, and any problem areas requiring attention of either or both parties.

9-[10.] DOE [and NRC] will assure that all of its [employees and] contractors (prime and sub) involved in the repository projects observe applicable provisions of this appendix. This appendix will be distributed by DOE [and NRC] to all project specific prime contractors and subcontractors.

APPENDIX 7

AGREEMENT CONCERNING THE NRC ON-SITE REPRESENTATIVE (OR) FOR THE REPOSITORY PROJECTS DURING SITE INVESTIGATION AND CHARACTERIZATION

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The following points are agreed to:

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If objections to the OR attendance are voiced for any reason, the reason should be specified. If the OR does not agree with the objection to his attendance, it will be raised to a higher management level for resolution. If resolution cannot be achieved, the OR will not attend the meeting in question.

2. In order to facilitate orderly and useful conduct of the various DOE/NRC information exchanges, the OR contacts with the DOE program shall be made with the DOE and DOE contractor personnel identified in Appendices 1, 2 and 3 of the base agreement whenever practical.
3. The OR may communicate orally (in person or by phone) with the project participants (persons) employed by DOE, DOE's prime contractors or the prime's subcontractors, on-site or off-site providing that the following procedures are followed. The OR shall arrange for all individual sessions with prime contractor and subcontractor staff by contacting the proper prime contractor section or department manager or proper DOE Team Leader. The OR will avoid discussions with personnel when it would appear to disrupt their normal duties and will schedule a discussion period at a mutually convenient time. The OR will keep DOE or cognizant DOE prime contractor supervisory personnel informed of near term (approximately 1 week) areas for intended review and the project participants who may be contacted. It is the option of DOE or the person contacted by the OR as to whether or not a supervisor or third party is to be present. No record of these discussions is required, however questions that are raised or other issues that arise as a result of the above interactions will be reported to the NRC Division of Waste Management and to the cognizant DOE project personnel by the OR as soon as practical.
4. DOE project office(s), DOE prime contractors and their subcontractors will provide the OR access to records which would be generally relevant to a potential licensing decision by the Commission as follows. Upon request by the OR, the DOE or the DOE contractor or subcontractor shall provide copies of any records of raw data provided that the quality assurance checks specified in section 3.a of the Procedural Agreement have been performed. Records which document the analysis, evaluation, or reduction of raw data or contain information deduced by reason will be made available to the OR, after the documentation has been peer reviewed by the prime contractor, and cleared and approved by DOE.

5. Drafts of documents required by the Nuclear Waste Policy Act of 1982, such as the EA, and SCP, which have not been approved by DOE, will not be provided to the OR without DOE approval. Documents of this type may be made available by DOE, but not the DOE contractor.
6. The OR does not have the authority to direct DOE, their contractors or subcontractors to perform any work. Any formal identification of questions or issues for investigation by DOE that could result in contractor or subcontractor work must be formally presented to DOE through the NRC Division of Waste Management in writing.
7. The OR will attend on-site meetings upon request by the DOE project office or prime contractor on-site whenever possible. The OR will provide any records which would normally be available under 10 CFR Part 2.790 of the Commission's regulations to project participants upon request to copy. If convenient, copies of such records will be provided by the OR.
8. The OR shall be afforded access to the site, research facilities, and other contractor and subcontractor areas to observe testing or other data gathering activities, in progress, as part of site characterization and site investigation subject to compliance with the applicable requirements for identification, and applicable access control measures for security, radiological protection and personnel safety, provided that such access shall not interfere with the activities being conducted by DOE or its contractors (see point 6 above) and that any discussions conducted during such access shall comply with point 2 above.

Such access shall be allowed as rapidly as it is for DOE or DOE contractor employees upon display of an appropriate access identification badge, or, if badging is not possible for national security reasons, upon prior notification to DOE or cognizant contractor supervisory personnel (by memorandum, telephone or personal contact). When an access identification badge is available to DOE or DOE's contractors and subcontractors on a routine basis, it shall be made available to the OR upon completion of the required security clearances and appropriate radiological and personnel safety training. DOE will ensure that any training required is provided to the OR.

9. The OR and DOE will make arrangements which allow for at least weekly information exchanges to discuss pending DOE plans and program status, and any problem areas requiring attention of either or both parties.
10. DOE and NRC will assure that all of its employees and contractors (prime and sub) involved in the repository projects observe applicable provisions of this appendix. This appendix will be distributed by DOE and NRC to all project specific prime contractors and subcontractors.

FOR DOE:

Ralph Stein

DATE:

6/3/85

FOR NRC:

DATE:
