

INTERAGENCY AGREEMENT BETWEEN THE
NUCLEAR REGULATORY COMMISSION AND THE DEPARTMENT OF ENERGY

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ABSTRACT

The purpose of this paper is to discuss the interagency agreement between the Nuclear Regulatory Commission and the Department of Energy concerning the geologic disposal of high level nuclear waste as described in the Nuclear Waste Policy Act of 1982 (NWPA). This allows NRC to pursue the early interaction and prelicensing consultation to assure that DOE will be in a position to submit a high-quality license application for a repository and yet still allow NRC to retain its ability to conduct independent and impartial license review.

After passage of the Nuclear Waste Policy Act (NWPA), NRC and DOE concluded an agreement covering interaction on DOE's program for investigating and characterizing repository sites for disposal of high-level waste and spent reactor fuel. The master agreement is supplemented by a subsidiary agreement which concern technical exchanges on specific repository projects in various geologic media. Pursuant to the master agreement, in order to assist interaction, NRC has established on-site licensing representation for the three categories of geologic media involved in DOE's first repository project--that is basalt, tuff, and salt. The agreement also addresses requirements concerning meetings during the period DOE site characterization activities are being planned or are in progress, timely release of information, and availability of site-specific samples. The repository agreement was noticed in the Federal Register, in accordance with standard practice.

As mentioned above, the repository agreement came about as a consequence of the NWPA. The law gave each agency new and modified authority. As a general matter of public administration, it was prudent that roles and responsibilities of DOE as licensee and NRC as licensor be clearly understood. NRC had been charged under prior law with licensing DOE in certain respects--under the 1974 Energy Reorganization Act and the Atomic Energy Act; nonetheless, the consultation requirements and activities outlined in the NWPA were sufficiently complex that our existing working relationships needed buttressing. The repository-siting agreement provides such support. Moreover, based on NRC's responsibilities which existed prior to the NWPA, we had promulgated technical criteria and procedural requirements concerning disposal of high-level waste and spent fuel in geologic repositories--10CFR Part 60. This regulation is being modified in light of the NWPA. Such modification effort has been facilitated by having the framework provided by the repository agreement.

The fundamental objective of the repository agreement is to identify licensing issues early and, where possible--and in consultation with States and affected Indian tribes--to resolve such issues prior to DOE's submission of a license application to construct a repository.

It has been the philosophy of NRC that they, as regulators, observe two principles in the relationship with DOE:

- o NRC must retain its ability to conduct independent and impartial reviews of a DOE license application.
- o NRC must provide timely guidance to the applicant so that resources, both NRC's and DOE's, are not wasted and so that legislatively established milestones may be met.

The agreements helps NRC in their efforts to overcome what might be seen as competing interests in the relationship. NRC does not want DOE to "fly blind". NRC is not in the business of laying back and asking DOE the equivalent of "bring me a rock; then I'll tell you if I like it".

The NWPA gives NRC a specific time period--three years--in which to act on DOE's application to construct the first repository. NRC is pursuing the early interaction and prelicensing consultation under the agreement to help assure that DOE will be in a position to submit a high-quality license application for the repository and that the repository program can be accomplished without costly delay or rework. At the same time, NRC is maintaining its independent ability to determine whether DOE's performance of its responsibilities meets regulatory requirements and whether it is adequate to protect the public health and safety and the environment.

NRC experience with the repository-siting agreement offers some interesting contrasts with interagency agreements which NRC has concluded in other areas. In the case of the repository agreement, NRC was dealing with a first-of-a-kind endeavor--technically, institutionally, and politically. Circumstances dictated that NRC promptly establish the basic framework to guide interaction; yet, flexibility is needed to develop project-specific arrangements as appropriate. NRC approached these matters in two phases--development of the initial agreement and then the more detailed subsequent arrangements directed at repository projects in specific geologic media. The latter phase basically was completed last year; the subsidiary agreement is in force although, by its own terms, some residual matters remain to be completed.

From the perspective of institutional interactions, you can appreciate the time required to negotiate an interagency agreement in an area where new policy applies and complex programs must start up rapidly, and on a tight schedule. NRC is interacting with DOE under the

repository-siting agreement in an exceedingly open matter, which it is trusted will help strengthen public confidence in results of the technical reviews and staff exchanges. These meetings are documented; and representatives of the States and Indian tribes do attend joint meetings as participants, and others may attend as observers.

The conclusion of the subsidiary site-specific agreement completes NRC laying of the foundation for technical reviews and exchanges concerning repository siting and characterization. Thus, the ability to provide timely licensing guidance on the repository has been improved. Further, the interaction made possible by the agreement framework helps enable NRC to be involved in DOE's program and

planning on a "real time" basis. It is expected that the mutual efforts by the two agencies will result in a high-quality license application by DOE. It is hoped that, at the time DOE's application enters the adjudicatory hearing phase, the technical record which will have been established by that time will help all address any issues expeditiously.

The NRC and DOE have established fine working relationships in carrying out NWPA responsibilities. Respective management appreciates the stakes involved and the need for the national program to move forward while assuring that health and safety concerns are addressed.