

## THE DRAFT MISSION PLAN AMENDMENT

Roger W. Gale  
Office of Civilian Radioactive Waste Management  
U. S. Department of Energy

### ABSTRACT

The draft Mission Plan Amendment provides an opportunity for States and Indian Tribes and other involved parties to participate in a process that no other nation affords its citizens. More than just a comment period on a Department of Energy document, the amendment that is to be submitted later this year will lay before Congress, the documentary basis on which to make decisions about the scope and timing of the high-level waste program in what Secretary Herrington has called a "crossroads" year. The Amendment will distill the view of the participants and also present them to Congress as an integral part of the document. After four years of effort, the Nation is being afforded an opportunity to ask itself again whether the Act passed in 1982 is working and remains the best way to protect the public interest.

### INTRODUCTION

Having recently had an opportunity to meet with counterparts in various European countries and Japan, I have a greater appreciation of the lengths to which this Nation goes in soliciting views, providing meaningful opportunities for involvement, setting rigorous openly developed standards, and regular reevaluations. I am also more acutely aware than ever of how little of what I am saying is accepted as fact by representatives of some of the States and Indian Tribes for whom opportunities for meaningful participation are seen as grossly inadequate.

There is optimism that the program will succeed although it is clear that the credibility of DOE is being challenged and that it is to the courts and to Congress that most of the issues have gone for resolution. That is unfortunate, but will not deter DOE from continuing to look for opportunities to improve the quality of interaction.

In this climate, the draft Mission Plan Amendment provides the parties involved in the program, an opportunity to renew their efforts to work together to resolve a national problem for which we share a responsibility to the citizenry of this country. The amendment addresses issues that States and Tribes have asked us to review including: the pace of both the first and second repository programs, consultation and cooperation, and the impacts of siting. The amendment is an effort by DOE to respond to these concerns and to provide Congress with an opportunity to review progress since the passage of the Act.

The significant developments and new information contained in the draft amendment to the Mission Plan are in five categories:

- 1) Achievements in the first repository program including the nomination and recommendation of sites for detailed site characterization,
- 2) A five year extension of the schedule for the first repository resulting from reevaluations of the work necessary to proceed,
- 3) New waste-generation data that, along with other considerations, indicated that it was prudent to indefinitely postpone site-specific activities for the second repository while continuing technical development activities,

4) Developments concerning the submission to Congress of a proposal for a Monitored Retrievable Storage (MRS) facility as an integral part of the waste management system,

5) Actions taken and progress made toward better defining the consultation and cooperation process with States and affected Indian Tribes.

The specific issues that have emerged and which may warrant specific Congressional attention are:

- 1) Indefinite postponement of site-specific work for a second repository which would be required in endeavoring to meet the July 1, 1989, date for selecting sites for characterization (Section 112 of the NWRPA). The department believes site-specific work should be reconsidered in the mid-1990's which would allow ample time to implement a second repository program prior to the first repository achieving its 70,000 metric ton capacity.
- 2) Extension of the date contemplated for operation of the first repository from January 31, 1998 to 2003 to allow time to carry out the necessary high-quality technical program. The extension is needed to carry out an extensive site characterization program, to prepare licensing documents to comply with Nuclear Regulatory Commission (NRC) requirements that have yet to be promulgated in their entirety and to provide additional opportunity for consultation and cooperation with affected States and Indian Tribes.
- 3) Inability to submit the Monitored Retrievable Storage (MRS) proposal to Congress required by Section 141 of the NWRPA because of litigation. The Department is prepared formally to submit the proposal when these real issues are resolved.

### First Repository

On May 27, 1986, the Secretary nominated five sites as suitable for site characterization and recommended to the President that three of these sites--the Yucca Mountain site in Nevada, the Deaf Smith County site in Texas, and the Hanford site in Washington--be characterized as candidate sites for the first repository. The President approved the recommendation on May 28, 1986. Each of the nominations was accompanied by comprehensive final

Environmental Assessments that were issued after two years of preparation that included extensive public interaction.

To aid in identifying preferred sites for characterization, the Department developed and applied a formal decision-aiding methodology. The methodology and its application were subsequently reviewed and found appropriate by the National Academy of Sciences although the Academy did not review the site-recommendation decision or comment on the three selected sites. Given the thoroughness of the analyses in the Environmental Assessments, the information base, the results obtained with the decision-aiding methodology, and other considerations, the Department considers that the set of sites recommended provides the most advantageous combination of characteristics and conditions for the successful development of repositories at such sites.

Site characterization began with the President's approval and will continue for 6 to 7 years. Site characterization includes laboratory investigations; surface based data-collection activities like geologic mapping and seismic surveys; studies conducted through the drilling of boreholes; and studies conducted in the proposed host rock in an exploratory-shaft facility. Although Congress, in the budget appropriation for the civilian waste program for fiscal year 1987, specified that no funds are to be used for drilling any exploratory shaft at any site in fiscal year 1987, site-specific work other than exploratory shaft drilling will be conducted at reduced funding levels.

Accordingly, the Department is proceeding with site characterization activities at the three sites. Before sinking the exploratory shafts, the Department will prepare a site characterization plan for each site. These plans will be submitted to the Nuclear Regulatory Commission (NRC), the Governors and legislatures of the States, affected Indian Tribes, and the public. At the site in Texas, the Department is proceeding with its plans for obtaining access to the land. At the Nevada site, land access is being pursued with other Federal agencies. And at the Hanford, Washington site, plans are proceeding for hydrologic investigations that will precede exploratory shaft drilling. Work will also be initiated on waste package and repository conceptual designs.

As discussed in the amendment, many important milestones have been achieved. However, based on the experience gained in achieving those milestones, advances in the technical planning of the program, an assessment of the current status of the program and recent budget decisions, the Department has revised the schedule for the first repository. The rebaselined schedule shows a 5-year extension of the date to begin operations at the first repository, from 1998 to 2003.

#### Second Repository

The latest spent fuel projections show that a second repository will be required to accommodate all the expected waste. However, on May 28, 1986, the Secretary announced that he had reassessed the timing of the Department's activities toward identification of candidates for a second repository and decided to postpone indefinitely plans for any site-specific work. Several factors suggested this decision was prudent. These included:

- Approval by the President of three sites to be characterized as candidates for the first repository;
- The expectation of receiving Congressional authorization to proceed with the development of a Monitored Retrievable Storage Facility;
- Projections of spent fuel generation that are uncertain but generally declining;
- The recognition that the limitation in the Act for emplacing no more than 70,000 metric tons of spent fuel in the first repository before the second is in operation will not be reached until well after 2020 means that Congress need not consider a proposal for a second repository until the mid-1990s or later; and
- A decision that spending hundreds of millions of dollars now on repository siting would be premature and unsound fiscal management.

The Department intends to continue a program for, and remains committed to, a second repository, with studies that will focus on generic technical issues. This program will include non-site-specific studies of potential host rocks, the development of analytical approaches to evaluate long-term performance, and a continuation of the current program of international cooperation.

With regard to the indefinite postponement of the second repository, the Department has testified before Congress that the basis for such actions and new program for the second repository would be described in an amendment to the Mission Plan and be provided to Congress for information and direction. The Department's General Counsel has concluded that "...it is entirely appropriate, as a matter of law, for this office to have determined that significant matters, including new information, relating to the conduct of the second repository program should be presented to the Congress through an amendment to the mission plan". This amendment is intended to serve that purpose.

#### Monitored Retrievable Storage

As required by the contracts entered into with utilities, DOE is committed to start accepting waste for disposal in January 1998. The five-year extension for the first repository cited above requires a reevaluation of the acceptance strategy. The Department believes that the most advantageous course is the development of a monitored retrievable storage facility that is an integral part of the waste management system.

The Department had originally intended to submit a proposal to Congress in June 1985 but requested and received Congressional approval to delay the submission until January 1986. In August 1985, the State of Tennessee filed suit against the Department claiming that the Department failed to consult properly with the State of Tennessee prior to the identification of proposed sites for the MRS facility. On February 5, 1986, the United States District Court for the Middle District of Tennessee ruled in favor of the State and subsequently on February 7 issued an injunction prohibiting the Department from submitting the MRS proposal to Congress.

The decision and the injunction were immediately appealed by the Department to the United States Circuit Court of Appeals for the Sixth circuit. On

November 25, 1986, the Circuit Court of Appeals ruled in favor of the Department's position in the dispute, indicating that the actions taken by the Department in identifying sites for the MRS and in consulting with the State of Tennessee did not violate the Act. Subsequently, the State of Tennessee filed a petition for stay or extraordinary writ of injunction and for a rehearing with a suggestion that the case be reheard en banc. On December 31, 1986, the Circuit Court denied the petition for a rehearing, but on January 7, 1987, granted a stay for 30 days to allow the State of Tennessee to appeal to the Supreme Court. The stay will continue in effect until the Supreme Court takes final action on this appeal.

The intent of the Department regarding MRS is to fulfill its statutory obligations under the Act and submit the proposal on MRS to the Congress at the earliest date practicable.

#### Consultation and Cooperation

The Act requires the DOE to seek to enter into and to negotiate written consultation-and-cooperation agreements with eligible States and affected Indian Tribes. This is to occur after the approval of a candidate site for characterization or earlier at the request of an eligible State or affected Indian Tribe. The Department has been involved in a number of informal and formal negotiations with the State of Washington since 1979, with the Yakima Indian Nation since 1983, with the Confederated Tribes of the Umatilla Indian Reservation since 1985, and with the Nez Perce Indian Tribe since 1986. No negotiations have taken place yet with the States of Nevada and Texas.

To date, no formal C&C agreement has been concluded. Moreover, given the nature of the program and the reality that the perspectives of the States and affected Indian Tribes often differ from DOE's, we recognize that formal agreements may not be easy to reach.

The DOE also recognizes that the success of the waste-management program may depend largely on the success of institutional relations as well as interactions with the public. The DOE, therefore, plans to increase its efforts to improve productive institutional relations and to negotiate formal C&C agreements. To this end, the DOE recently invited the eligible States and affected Indian Tribes to meet for the purpose of arriving at a mutually acceptable definition of "consultation and cooperation". The participants in this meeting agreed that a mutually acceptable definition would be very useful but felt that it could not be developed in time for inclusion in this draft Mission Plan amendment.

In conclusion, your comments on the draft Mission Plan Amendment will play a valuable part in Congress' review of the program. DOE's willingness to meet with affected and involved parties to clarify the intent of the amendment and, in particular, to better define for Congress the meaning of consultation and cooperation, remains firm. We look forward to receiving your comments, to responding to them constructively and presenting them to Congress for its consideration.