

POLICY ISSUE NOTATION VOTE

June 13, 2005

SECY-05-0104

FOR: The Commissioners

FROM: Luis A. Reyes
Executive Director for Operations

SUBJECT: OPTIONS AND RECOMMENDATION FOR THE POTENTIAL ROLE OF
THE NUCLEAR REGULATORY COMMISSION DURING THE
DEVELOPMENT OF THE DEPARTMENT OF ENERGY
ENVIRONMENTAL IMPACT STATEMENT ON DISPOSAL OF
GREATER-THAN-CLASS-C RADIOACTIVE WASTE (SRM-M050215)

PURPOSE:

To provide a discussion of the advantages and disadvantages of options for the potential role of the U. S. Nuclear Regulatory Commission (NRC) in the U. S. Department of Energy's (DOE) development of an environmental impact statement (EIS) to address disposal of Greater-than-Class-C (GTCC) radioactive waste, and to request Commission approval of the staff's recommendation that NRC become a cooperating agency for the EIS.

SUMMARY:

This paper discusses two options for NRC participation in the DOE EIS, acting as either a: (1) cooperating agency; or (2) commenting agency. The staff recommends that the Commission authorize the staff to pursue a written cooperating agency agreement (memorandum of understanding [MOU]) with DOE.

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The primary advantages of the cooperating agency option are that NRC can: (1) realize an overall resource savings by potentially reducing or eliminating the need for NRC to develop its own EIS or to expend significant efforts toward adoption of DOE's EIS; (2) provide timely explanations of NRC's independent role, requirements, and plans; and (3) allow early planning to assure the regulatory infrastructure is in place to proceed with a timely licensing decision. In addition, the cooperating agency option is consistent with both NRC obligations under the National Environmental Policy Act of 1969 (NEPA) and the Council on Environmental Quality (CEQ) guidance. The primary disadvantage of this option is that some stakeholders may perceive that a cooperating agency role is not consistent with NRC's independent regulatory responsibilities. The staff has identified cooperating agency interactions that provide opportunities for managing such perceptions.

The primary advantage of the commenting agency option is to reduce, rather than eliminate, the likelihood that individuals/groups develop the perception that NRC is not acting in an independent regulatory manner. Additionally, resource expenditures will potentially be less during the DOE EIS phase of the overall Federal process (DOE EIS through NRC licensing) to accomplish GTCC disposal. However, resource usage will likely increase significantly to support the NRC EIS phase of NRC licensing. The total resources that NRC would expend to complete the entire Federal process as a commenting agency would likely exceed the total expended as a cooperating agency. In addition to greater expenditure of total resources, the commenting agency option disadvantages also include minimal opportunity for NRC to assure that the DOE EIS fulfills NRC needs and expectations for potential adoption of the DOE EIS.

BACKGROUND:

This paper responds to the Commission's February 28, 2005, staff requirements memorandum (SRM) addressing the February 15, 2005, briefing on waste safety programs, performance, and plans by the Office of Nuclear Material Safety and Safeguards (NMSS). The SRM directed the staff to provide the Commission its assessment of the advantages and disadvantages of options considered for NRC's potential role in DOE's EIS and to provide its recommendations.

On May 11, 2005, DOE issued an advanced notice of intent (ANOI) to prepare an EIS for a GTCC disposal facility (Attachment 1). On May 18, 2005, DOE sent NRC a letter inviting NRC to become a cooperating agency (Attachment 2). The DOE notice of intent is scheduled to be published in Fall 2005. In a March 2005 meeting, DOE staff indicated that their preliminary schedule is to issue a final EIS within 18 to 24 months (consistent with the ANOI). The DOE staff indicated that the schedule is based on internal DOE guidance applied to all of its EIS reviews.

The DOE staff has identified potential areas of the EIS process where NRC can assist as a cooperating agency: disposal facility performance objectives; disposal facility licensing options and compliance areas, including clarification of Agreement State authority; and regulatory guidance on characterization, transport, and disposal of radioactive waste.

The Commission should also be aware of draft legislation which has been introduced into the 109th Congress, H.R.6, the "Energy Policy Act of 2005." Proposed Section 635 of H.R.6 specifies, among other things, that DOE coordinate with NRC and the U.S. Environmental

Protection Agency on the need for regulatory guidance for disposal of GTCC waste (Attachment 3). Finally, existing Federal regulations and guidance relating to cooperating and/or commenting agency roles are listed in Attachment 4.

DISCUSSION:

The Low Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) assigned the Federal Government responsibility for disposal of GTCC waste [Section 3(b)(1)(D)]. The LLRWPA also specifies that all GTCC waste resulting from the activities licensed by NRC (and NRC Agreement States), “shall be disposed of in a facility licensed by the Nuclear Regulatory Commission that the Commission determines is adequate to protect the public health and safety” [Section 3(b)(2)]. DOE accepted responsibility for GTCC waste disposal in 1986 (SECY-89-083, Enclosure D, DOE Memorandum from Sandra Sherman to Joseph Coleman, dated November 25, 1986).

Both DOE and NRC will need to address the NEPA provisions for preparing an EIS addressing their decisions about siting and licensing GTCC facilities (respectively). As either a cooperating or commenting agency, NRC will have the option of adopting all or part of the DOE EIS in place of or in support of NRC completing its own EIS. As a cooperating agency for the DOE EIS, NRC may participate directly in the development and information flow during all phases of the DOE EIS¹. In a commenting agency role, NRC participation and information will be limited to public comment periods and observations during public scoping meetings and other publicly available information. Finally, as a commenting agency, there is greater likelihood that NRC will need to produce its own EIS, rather than being able to adopt all or part of the DOE EIS.

An overview of the advantages and disadvantages of each NRC option is provided below, with supporting discussion in Attachment 5.

Cooperating Agency Option

The CEQ regulations for implementing NEPA define “cooperating agency” in 40 CFR 1508.5 as meaning, “any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal....” NRC has both jurisdiction by law and special expertise. Further, the role of a cooperating agency is to (1) participate in the NEPA process at the earliest possible time, (2) participate in the scoping process, and (3) assume, on request of the lead agency, responsibility for developing information and preparing environmental analyses including portions of the EIS concerning which the cooperating agency has special expertise (40 CFR 1501.7). Overall, the cooperating agency option is consistent with NRC NEPA obligations, CEQ guidance, and the principles of efficiency in “good government” (see Attachment 5).

The cooperating agency option also has the advantage of positioning NRC to: (1) better assure the DOE EIS addresses areas and issues that will increase the potential for NRC to adopt all or

¹ It should be noted that serving as a cooperating agency does not preclude an agency’s right to prepare its own EIS if it determines the EIS prepared by the lead agency is not complete. See CEQ Forty Most Asked Questions, 14b (Attachment 4).

part of the EIS, as well as begin early planning for guidance development and possibly rulemaking activities; (2) engage in early, two-way communication with stakeholders and the public to identify and address their interests, concerns, and need for accurate and timely explanations of the independent NRC role, requirements, and planning; and (3) save resources when NRC later engages in its own EIS process or adoption of the DOE EIS.

A potential disadvantage of this option is the necessity for earlier obligation of resources, with initial spending slightly higher than for the commenting agency option during the DOE EIS phase of the overall Federal process (DOE EIS through NRC licensing). However, the cooperating agency option may save significantly more resources during the NRC licensing phase to result in an overall total of NRC resources spent on the entire Federal process that will likely be less than total resources for NRC starting the process in a commenting agency role.

Another disadvantage is the potential that the public and stakeholders may perceive that NRC cooperating agency activity is not consistent with its *independent* regulatory responsibilities. This perception is balanced by the possibility that if NRC abstains from becoming a cooperating agency, NRC can be perceived as not fulfilling its NEPA obligations. Furthermore, the cooperating agency option has specific opportunities for managing NRC activities so as to minimize and/or address such perceptions. The staff can clarify NRC's independent role through several means: (1) cooperating agency interactions with the public and stakeholders at scoping meetings; (2) the language and content of a written cooperating agency agreement with DOE [e.g., MOU]; and (3) conducting and documenting the regulatory and technical review of the license application in the same independent manner that NRC does for other license application reviews.

Commenting Agency Option

If NRC does not participate in the DOE EIS process as a cooperating agency, it is still responsible under NEPA for commenting on the DOE draft EIS during the public comment period. In this case, NRC will not be involved in development of the EIS or its supporting analyses. Further, DOE will be required to consider NRC comments made during the public comment period, but will not be required to interact with NRC to address NRC comments or the comments of stakeholders and the public.

As a commenting agency, NRC will still need to interact with DOE as DOE goes through decision making related to its EIS, new disposal program planning, and, ultimately, its NRC license application. These interactions are standard for any license applicant in the early stages of developing its planning. Finally, this option will necessitate that the NRC licensing review include either development of a separate NRC EIS or adoption and likely supplementation the DOE EIS.

The primary advantage of the commenting agency option is to reduce, rather than eliminate, the likelihood that individuals and groups will perceive that NRC is not acting in an independent regulatory manner. Additionally, the commenting agency role will initially require fewer resources than the cooperating agency role.

There are several disadvantages to the commenting agency option: (1) significant resource expenditures for an NRC EIS or a supplemental EIS that will likely result in total NRC resource

expenditures exceeding cooperating agency totals for the entire Federal process; (2) minimal opportunity for NRC to assure that the DOE EIS fulfills NRC needs and expectations for adoption; (3) limited access to early information and discussions which will inform NRC comments on the draft EIS, and NRC decisions before and after the EIS; and (4) NRC will not realize the benefits of early interaction with DOE that can otherwise assist NRC in identifying issues and begin planning for both new technical guidance and rulemaking. NRC will also likely receive some criticism as a result of refraining from participating as a cooperating agency.

COMMITMENTS:

Consistent with the Commission direction in its SRM, dated February 28, 2005, the staff has not committed to serving as a cooperating or commenting agency for the DOE GTCC EIS.

RECOMMENDATION:

The staff recommends that the Commission authorize NRC to become a cooperating agency for the DOE GTCC EIS.

To facilitate the cooperating agency activities, the staff also recommends development of a formal MOU with DOE. An MOU will provide the means for identifying and containing NRC cooperating agency activities. In addition, an MOU will permit the staff to negotiate appropriate time frames for NRC activities, resulting in an EIS schedule commensurate with NRC budgeted resources and overall staffing levels.

RESOURCES:

The NMSS budget includes 0.5 full-time equivalents (FTE) in Fiscal Year (FY) 2006 and 0.7 FTE with \$100K in FY 2007. These resource estimates were developed prior to detailed discussions with DOE and with the uncertainty as to what role NRC will pursue (either cooperating agency or commenting agency). These resources will be sufficient to serve as a commenting agency. The level of resources needed to serve as a cooperating agency is highly dependent on how the Commission intends for the staff to participate. Based on our current understanding of DOE's potential expectations for NRC participation as a cooperating agency, the staff estimates resource needs will be 0.75 FTE in FY 2006 and 1 FTE with \$100K in FY 2007. Any additional funds needed above the budgeted resources in FY 2006 and FY 2007 will be reallocated from the Materials Users Environmental Reviews Planned Activity (Subprogram Nuclear Materials Users Licensing and Inspection, C-3 Line 175) (this represents the portion of resources originally budgeted for the environmental review associated with controlling the disposition of solid materials).

The Office of the General Counsel (OGC) anticipates that its resource needs will be 0.1 FTE in FY 2006 and 0.1 FTE in FY 2007 if NRC is a commenting agency. If NRC is a cooperating agency, OGC expects that 0.2 FTE in FY 2006 and 0.2 FTE in FY 2007 will be needed. These resources are within OGC's budget.

Given the dependence of the staff's recommendation on DOE planning and implementation, as well as the dynamic of H.R.6, if a significant amount of time (greater than 30 days) passes or the Commission gives staff direction differing from staff's recommended action, this section of the paper will need to be revisited after issuance of the related draft SRM.

COORDINATION:

The OGC has no legal objection. The Office of the Chief Financial Officer reviewed the paper and concurs.

/RA/

Luis A. Reyes
Executive Director
for Operations

Attachments:

1. DOE Advance Notice of Intent (ML051540458)
2. DOE Cooperating Agency Invitation Letter (ML051540447)
3. Excerpt From Proposed Section 635 of H.R.6, the "Energy Policy Act of 2005" (ML051580272)
4. Requirements and Guidance Associated with Cooperating and Commenting Agency Roles
5. Information Supporting The Advantages and Disadvantages for Each NRC Option

reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) Will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) How might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 5, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Service, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Binational Migrant Education Program (BMEP) State MEP Director Survey.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 52.

Abstract: The survey collects information from State Migrant Education Programs (MEPs) on their participation in the Binational Migrant Education Program (BMEP) to serve children who migrate between Mexico and the U.S.

Requests for copies of the proposed information collection request may be accessed from <http://editsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 2755. When you access the information collection, click on "Download Attachments" to view.

Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, D.C. 20202-4700. Requests may also be electronically mailed to the Internet address OCIO_RIMC@ed.gov or faxed to 202-245-6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Kathy Axt at her e-mail address Kathy.Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

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DEPARTMENT OF ENERGY

Advance Notice of Intent To Prepare an Environmental Impact Statement for the Disposal of Greater-Than-Class-C Low-Level Radioactive Waste

AGENCY: Department of Energy.

ACTION: Advance notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) is providing advance notice of its intent to prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act (NEPA) on the disposal of Greater-Than-Class-C (GTCC) low-level radioactive waste (LLW) generated by activities licensed by the Nuclear Regulatory Commission (NRC). The primary purpose of this EIS is to address the disposal of wastes with concentrations greater than Class C, as defined in NRC regulations at 10 CFR part 61, resulting from NRC or Agreement State licensed activities (hereafter referred to as NRC licensed activities). DOE also plans to review its waste inventories with a view toward including those wastes with characteristics similar to GTCC waste and which otherwise do not have a path to disposal in the scope of the EIS, as appropriate. DOE intends that this EIS will enable DOE to select any new or existing disposal locations, facilities, and methods for disposal of GTCC LLW and DOE waste with similar characteristics.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA) assigned to the Federal Government responsibility for the disposal of GTCC radioactive waste. This EIS will evaluate alternative locations and methods for disposal of these wastes. Potential disposal locations include deep geologic disposal facilities; existing LLW disposal facilities, both commercial and DOE; and new facilities at DOE or other government sites, or on private land. Methods to be considered include deep geologic disposal, greater confinement disposal configurations, and enhanced near-surface disposal facilities.

DOE is issuing this Advance Notice of Intent (ANOI), pursuant to 10 CFR

1021.311(b), in order to inform, and request early comments from, the public and interested agencies about the proposed action, the preliminary range of alternatives, and the potential issues related to DOE's decisions for this category of waste. Following the issuance of this ANOI, DOE intends to conduct further activities to collect updated information from licensees and DOE sites on waste characteristics and projections to support the EIS analysis. As part of that effort, DOE may seek assistance from industry trade associations, Agreement States, NRC, and other appropriate entities. DOE intends to invite the NRC and the Environmental Protection Agency to participate as cooperating agencies in the preparation of this EIS.

DATES: Comments on this ANOI are due June 10, 2005. DOE will consider comments received after June 10, 2005 to the extent practicable. DOE plans to issue a Notice of Intent (NOI) for this EIS in the fall of 2005. The NOI will propose a range of reasonable alternatives for disposal methods and locations. After the NOI is issued, DOE will conduct public scoping meetings to assist in further defining the scope of the EIS and to identify significant issues to be addressed. The dates and locations of all scoping meetings will be announced in the NOI, subsequent Federal Register notices, and in local media.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS and questions concerning the proposed project to: James Joyce, Document Manager, Office of Federal Disposition Options (EM-13), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0119. Telephone (301) 903-2151, Fax: 301-903-3877, E-mail to: james.joyce@em.doe.gov (use "ANOI Comments" for the subject).

FOR FURTHER INFORMATION CONTACT: To request further information about this EIS, the public scoping meetings, or to be placed on the EIS distribution list, use any of the methods listed under ADDRESSES above. For general information concerning the DOE National Environmental Policy Act (NEPA) process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH-42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0119, Telephone: 202-586-4600, or leave a message at 1-800-472-2756, Fax: 202-586-7031.

This Advance Notice of Intent will be available on the Internet at <http://www.eh.doe.gov/nepa>.

SUPPLEMENTARY INFORMATION:

Background

GTCC waste is LLW generated by NRC licensed facilities with concentrations of radionuclides which exceed the limits established by the NRC for Class C radioactive waste, as defined by 10 CFR 61.55. The NRC defines LLW classes as A, B and C by the concentration of specific short- and long-lived radionuclides, with Class C having the highest concentration limits (see 10 CFR part 61, "Licensing Requirements for Land Disposal of Radioactive Waste").

Section 3(b)(1)(D) of the LLRWPA assigns to the Federal Government responsibility for the disposal of certain GTCC radioactive waste generated by NRC licensees, which is not owned or generated by DOE, by the United States Navy from decommissioning vessels, or by certain other federal activities. The LLRWPA also specifies that GTCC LLW, which is designated a federal responsibility by subparagraph (b)(1)(D) of the Act, be disposed of in a facility licensed by the NRC that the NRC determines is adequate to protect public health and safety. The LLRWPA further states that the Secretary of Energy shall issue a report recommending safe disposal options for such wastes. DOE issued such a report in 1987. The report can be obtained by contacting the Document Manager listed under ADDRESSES above.

GTCC LLW occurs in three forms, as discussed in the following sections and summarized in Table 1. The information in Table 1 on waste volumes and characteristics is based on reports that are approximately 10 years old and, therefore, may no longer be accurate. Accordingly, DOE plans to conduct activities to update this information following the issuance of this ANOI. The reports identified below can be obtained by contacting the Document Manager listed under ADDRESSES above.

1. Sealed Sources

Sealed sources contain radionuclides in concentrated, relatively small, encapsulated packages. These sources are widely used in medicine, agriculture, research and industry. DOE funded a study by the Idaho National Engineering Laboratory (*Characterization of Greater-Than-Class-C Sealed Sources, Volumes 1, 2, and 3*, DOE/LLW-163 [Idaho Falls, Idaho: Sept. 1994]), which estimated there are about 250,000 GTCC sealed sources in the United States.

In the past, NRC has approached DOE regarding the disposition of unwanted sealed sources that present security or safety and health concerns due to existing storage conditions. As a result of these concerns, DOE has been recovering domestic sealed sources since 1992. This effort has focused on those sources that were determined to pose the highest risk, resulting in recovery, transfer of title and possession to DOE, and secure interim storage by DOE of approximately 10,000 GTCC sealed sources. To date, no disposal path for many of these sealed sources has been identified. The September 11, 2001, terrorist events and subsequent potential threats have heightened concerns that individuals or organizations could gain possession of these sources and use them as the radionuclide source to make a Radiological Dispersal Device (also known as a "dirty bomb"). According to a DOE-funded study by the Idaho National Engineering Laboratory (*Greater-Than-Class C Low-Level Radioactive Waste Characterization: Estimated Volumes, Radionuclides and Other Characteristics*, DOE/LLW-114, Revision 1 [Idaho Falls, Idaho: Sept. 1994]), the expected volume of sealed sources requiring disposal through 2035 is estimated to be as high as 1,913 cubic meters (packaged volume).

2. GTCC-Activated Metals

There are over 100 operating nuclear power plants and approximately 20

non-operating power plants in various phases of decommissioning across the United States. As a result of reactor operations, portions of the reactor barrel and other stainless steel components near the fuel assemblies become highly activated by the neutron flux. The majority of this waste is generated when nuclear power plants are decommissioned, although some may result from maintenance activities performed before decommissioning. Many of these nuclear power plants are applying for and receiving license extensions from NRC. Therefore, much of this waste will be generated in the future. According to DOE/LLW-114, Revision 1, nuclear utilities will generate an estimated 864 to 5,960 cubic meters (packaged volumes) of GTCC-activated metal LLW through 2035.

3. Other GTCC LLW

The third form of GTCC LLW consists of material such as nuclear power plant resin, filter media and general laboratory waste (glove boxes, gloves, wipes, smoke detectors), job wastes or other like debris from NRC-licensed fuel fabrication, fuel testing, and research laboratories. Nuclear utilities will generate an estimated 167 to 866 cubic meters of such waste through the year 2035 (DOE/LLW-114, Revision 1).

In addition, DOE manages waste with radionuclide concentrations similar to GTCC LLW. Under the Atomic Energy Act of 1954, as amended (AEA), DOE has the authority to regulate the management of the radioactive hazard of its wastes; therefore, DOE does not use the 10 CFR part 61 classification system, and most DOE wastes are not generated by NRC-licensed activities. Some of these DOE wastes are very similar to GTCC waste in that they are low-level wastes with concentrations greater than Class C and currently do not have an identified path for disposal. Much of the DOE waste that is similar to GTCC waste is generated by AEA defense activities.

TABLE 1.—SUMMARY OF WASTES BEING CONSIDERED FOR INCLUSION IN THE SCOPE OF THE PLANNED ENVIRONMENTAL IMPACT STATEMENT ADDRESSING LONG-TERM DISPOSITION OF GREATER THAN CLASS C WASTE

Waste form	Primary source	Volume and activity*
Sealed Sources	Primarily medical, industrial, and scientific sources containing long-half-life nuclides (e.g. americium, plutonium) and high activity sources with shorter half-lives such as cesium-137, and strontium-90.	Total estimate through 2035 is up to 1,913 cubic meters, with a total activity industrial, and scientific sources of approximately 4,040,000 curies.
Activated Metal	Primarily from more than 100 nuclear power currently operating, and decommissioning activities at 24 plants.	As decommissioning of reactors proceeds over time, it is estimated that GTCC activated metal will amount to about 864 plants to 5,960 cubic meters, containing 38 to 102 million curies through year 2035.
Other Waste	Assessment of wastes such as glove boxes, fuel fabrication equipment, and trash resulting from source manufacture, research, utility, medical, agricultural and industrial sources.	It is estimated that the quantity of non-DOE waste in this category will amount to about 167 to 866 cubic meters, containing 5,962 to 19,707 curies through 2035.

TABLE 1.—SUMMARY OF WASTES BEING CONSIDERED FOR INCLUSION IN THE SCOPE OF THE PLANNED ENVIRONMENTAL IMPACT STATEMENT ADDRESSING LONG-TERM DISPOSITION OF GREATER THAN CLASS C WASTE—Continued

Waste form	Primary source	Volume and activity*
DOE Waste	DOE also plans to review its waste inventories with a view toward including those wastes with characteristics similar to GTCC waste in the scope of the EIS, as appropriate.	DOE plans to develop an inventory, including volume and activity estimates.

*Volume and activity estimates were obtained from DOE/LLW-114, Revision 1. All volume estimates are packaged volumes.

Purpose and Need for Action

DOE needs to identify the facilities and methods for disposing of GTCC LLW and similar DOE waste. Pursuant to the LLRWPA, the Federal Government is responsible to provide disposal for GTCC LLW generated by NRC licensees. DOE is also responsible for the disposal of its wastes that are similar to GTCC waste. Currently, there are no facilities available for disposal of GTCC waste. Until disposal capability becomes available, the only option for managing GTCC LLW is to store it at its current locations or to find a location that can receive the waste and store it until a disposal facility is available to receive it.

Discussion

In the 1987 report to Congress that provided recommendations on the disposal of GTCC LLW, the Secretary of Energy identified a number of activities that could be undertaken regarding GTCC waste including resolving regulatory uncertainties, addressing technical issues, and taking steps to ensure that entities that generate GTCC LLW bear all reasonable costs of waste disposal.

In 2002, the General Accounting Office (now called the Government Accountability Office or GAO) conducted a review to determine the number of unwanted sealed sources in the United States, to determine the status of recovery efforts within DOE, to identify problems that may exist regarding recovery efforts, and to determine the status of DOE's efforts to provide a disposal facility for unwanted sealed sources. The GAO prepared a report, *Nuclear Nonproliferation-DOE Action Needed to Ensure Continued Recovery of Unwanted Sealed Radioactive Sources, GAO-03-483*, recommending that DOE initiate the process to develop a permanent disposal facility for GTCC LLW, and that it develop a plan that would establish milestones for the process, evaluate disposal options, estimate costs and address legislative, regulatory, and licensing considerations. Although GAO focused its review on sealed sources, DOE recognizes the LLRWPA

requirement that the Federal Government is responsible for disposal of other types of GTCC LLW from NRC-licensed activities. DOE also plans to review its waste inventories with a view toward including those wastes with characteristics similar to GTCC waste in the scope of the EIS, as appropriate.

Potential Range of Alternatives

DOE proposes to dispose of GTCC LLW in a manner that protects human health and the environment. Accordingly, DOE intends to prepare an EIS pursuant to NEPA that would evaluate reasonable alternatives for disposal of these wastes. The scope of the EIS would include disposal capacity that will be needed for (1) current and projected GTCC LLW generated by NRC licensees that does not have a disposal pathway, and (2) DOE wastes with characteristics similar to GTCC waste identified for inclusion in the EIS based on DOE's inventory review.

Alternatives to be considered include disposal in new or existing DOE or commercial facilities, including greater confinement disposal configurations, geologic disposal, or enhanced near-surface disposal facilities. The varied forms of GTCC LLW may make multiple locations and disposal methods desirable, and this EIS would evaluate such options.

New facilities that could offer greater confinement disposal would include capabilities such as boreholes, intermediate depth disposal, and other specially designed facilities. DOE would also consider which types of GTCC LLW could be safely disposed of in existing commercial LLW disposal facilities and DOE disposal facilities. The potential environmental impacts of using both existing and new facilities owned and operated by DOE as well as existing and new facilities owned and operated by commercial licensees would be considered. DOE would evaluate whether all waste types can or should be disposed of in the same facility or whether different waste types would best be disposed of in different facilities. DOE would also consider quantities and time periods when wastes would require disposal and alternative modes of disposal.

Invitation to Comment

DOE invites the public to provide early assistance in identifying the scope and environmental issues to be analyzed in the forthcoming GTCC LLW disposal EIS. DOE will consider public comments and other relevant information in developing a Notice of Intent for publication in the Federal Register.

Following issuance of this ANOI, DOE will initiate activities to update information about the GTCC waste types and quantities in need of disposition. DOE will use this information to update the data to be analyzed in the EIS.

Preliminary Identification of Programmatic Issues

DOE plans to consider the issues listed below in its analysis of the potential impacts of alternatives for the disposal of GTCC LLW. DOE invites comment from Federal agencies, Native American tribes, state and local governments, licensees of sealed sources and other GTCC LLW, and the public on these and any other issues that should be considered in the EIS:

- Identifying the best means to obtain an accurate inventory of potential GTCC LLW and DOE waste with similar characteristics including the source, volume, concentrations, and other relevant characteristics.
- Determining the logistics for waste characterization, inventory, transportation, treatment, interim storage and permanent disposal.
- Evaluating mechanisms and scenarios under which GTCC waste could be safely disposed of in existing and/or new LLW disposal facilities.
- Identifying and proposing resolution for issues associated with the chemical constituents in the GTCC LLW that may be regulated under the Resource Conservation and Recovery Act (RCRA).
- Identifying options for ensuring that the beneficiaries of the activities resulting in the generation of GTCC LLW bear all reasonable cost of disposing of such waste.
- Identifying DOE wastes that are appropriate for inclusion in the EIS.

Potential Environmental Issues for Analysis

The DOE has tentatively identified the following environmental issues for analysis in the GTCC EIS. The list is presented to facilitate early comment on the scope of the EIS; it is not intended to be comprehensive nor to predetermine the alternatives to be analyzed or their potential impacts.

- Potential impacts to the general population and workers from radiological and non-radiological releases.
- Potential impacts, including air and water quality impacts.
- Potential transportation impacts from the shipment of GTCC radioactive waste to a disposal site.
- Potential impacts from postulated accidents.
- Potential disproportionately high and adverse effects on low-income and minority populations (environmental justice).
- Potential Native American concerns.
- Irrecoverable and irreversible commitment of resources.
- Short-term and long-term land use impacts.
- Compliance with applicable Federal, state, and local requirements.
- Long-term site health and environmental impacts, including potential impacts on groundwater quality.
- Long-term site suitability, including erosion and seismicity.

EIS Process

DOE plans to issue the NOI in the fall of calendar year 2005, which will be followed by a public scoping period. DOE will announce the availability of the Draft EIS in the Federal Register and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments. These comments will be considered and addressed in the Final EIS. DOE will issue a Record of Decision no sooner than 30 days after publication of the Environmental Protection Agency's notice of availability of the Final EIS.

Issued in Washington, DC, on May 4, 2005.

C. Russell H. Shearer,

Acting Assistant Secretary for Environment, Safety and Health.

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DEPARTMENT OF ENERGY

Office of Fossil Energy; Methane Hydrate Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

This notice announces a meeting of the Methane Hydrate Advisory Committee. Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that notice of these meetings be announced in the Federal Register.

DATES: Tuesday, June 7, 2005, 8 a.m. to 5 p.m.; Wednesday, June 8, 2005, 8 a.m. to noon.

ADDRESSES: Hotel Galvez, 2024 Seawall Boulevard, Galveston, Texas 77550.

FOR FURTHER INFORMATION CONTACT: Edith Allison, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202-586-1023.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy; assist in developing recommendations and priorities for the Department of Energy methane hydrate research and development program.

Tentative Agenda:

Tuesday, June 7

- Welcome and Introductions
- Joint meeting with the Interagency Coordinating Committee—8:15 a.m. to 12:30 p.m. Briefings on recent accomplishments, planned activities, issues and concerns by the Department of Energy; U.S. Geological Survey; Minerals Management Service; National Oceanic and Atmospheric Administration; Naval Research Laboratory; and National Science Foundation. Discussion of major interagency issues, including activities with other nations, FY2006 budgets, and reauthorization.
- Offshore Studies Update
- Arctic Studies Update
- Open Discussion: future program directions

Wednesday, June 8

- Changes in Advisory Committee structure: reauthorization, requirement for Committee members to be "special Government employees"
- Continue open discussion of future program directions and preparation of letter to the Secretary
- Adjourn

Public Participation: The meeting is open to the public. The Chairman of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral

statements regarding any of the items on the agenda, you should contact Edith Allison at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except federal holidays. Transcripts will be available upon request.

Issued at Washington, DC, on May 4, 2005.

Rachel M. Summel,

Deputy Advisory Committee Management Officer.

IFR Doc. 05-0396 Filed 5-10-05; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG05-62-000, et al.]

Wolverine Creek Goshen Interconnection LLC; Electric Rate and Corporate Filings

May 4, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wolverine Creek Goshen Interconnection, LLC

[Docket No. EG05-02-000]

Take notice that on April 29, 2005, Wolverine Creek Goshen Interconnection LLC (WCGI) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

WCGI states it is a Delaware limited liability company that will own and operate an interconnection transmission line that will be necessary to connect the wholesale generating facilities that will be owned by its owners companies (i.e., Wolverine Creek Energy LLC and Ridgeline Airtricity Energy, LLC) to the PacifiCorp transmission system. WCGI further states that the interconnection line will be used by WCGI to transport to the PacifiCorp system the power



Department of Energy

Washington, DC 20585

May 18, 2005

Mr. Jack R. Strosnider
Director, Office of Nuclear Material, Safety, and Safeguards
U.S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, MD 20852

Dear Mr. Strosnider:

The purpose of this letter is to invite the Nuclear Regulatory Commission's (NRC) participation as a cooperating agency in the Department of Energy's (DOE) preparation of an Environmental Impact Statement (EIS), pursuant to the National Environmental Policy Act (NEPA). The Department is planning to prepare an EIS to address the environmental impacts associated with developing and operating a facility for the disposal of greater than class C (GTCC) low-level radioactive waste (LLW). These wastes are LLW with concentrations of radionuclides that exceed the limits established by the NRC for class C radioactive waste, as defined in 10 CFR 61.55, *Waste Classification*.

The Low-Level Radioactive Waste Policy Amendments Act (LLRWPA) of 1985, Public Law No. 99-240, provides that the Federal Government shall be responsible for the disposal of GTCC LLW resulting from domestic NRC-licensed activities and specifies this GTCC LLW be disposed of in a NRC-licensed facility. The LLRWPA further designates the Secretary of Energy to recommend safe disposal options for such wastes.

Section 1501.6 of the Council on Environmental Quality implementing regulations for the NEPA outlines processes for inviting participation of other Federal agencies as cooperating agencies in the NEPA process. Such involvement is based on another Federal agency having either jurisdiction by law, or possessing special expertise regarding any environmental issue to be addressed in the NEPA document. Because of NRC's regulatory authority over the licensing of a disposal facility for GTCC LLW, we are requesting NRC to be a cooperating agency. In addition, NRC possesses a special expertise in the GTCC LLW inventories and disposal methods that may be considered in the EIS, and the relevant radiation protection standards, regulations, and guidance.

On May 11, 2005, DOE published an Advance Notice of Intent to prepare an EIS for the disposal of GTCC LLW (enclosure). Our goal is to issue a Notice of Intent (NOI) in the fall of 2005. The DOE then intends to complete the final EIS within one and one-half to two years from the issuance of the NOI.



Printed with soy ink on recycled paper

If you have any questions regarding this invitation, please feel free to contact me at (202) 586-0370, or Mr. James Joyce, the EIS Document Manager, at (301) 903-2151.

Sincerely,



Frank Marcinowski
Deputy Assistant Secretary for
Logistics and Waste Disposition Enhancements
Office of Environmental Management

Enclosure

cc wo/encl:

Carol Borgstrom, EH-42

Jeanie Loving, EH-42

Ed Le Duc, GC-51

Christine Gelles, EM-12

Scott Flanders, NRC

109TH CONGRESS
1ST SESSION

H. R. 6

AN ACT

To ensure jobs for our future with secure, affordable, and
reliable energy.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SEC. 635. SAFE DISPOSAL OF GREATER-THAN-CLASS C RA-
2 DIOACTIVE WASTE.

3 Subtitle D of title I of the Nuclear Waste Policy Act
4 of 1982 (42 U.S.C. 10171) is amended by adding at the
5 end the following new section:

6 "SAFE DISPOSAL OF GREATER-THAN-CLASS C
7 RADIOACTIVE WASTE

8 "SEC. 152. (a) DESIGNATION OF RESPONSIBILITY.—
9 The Secretary shall designate an Office within the Depart-
10 ment to have the responsibility for activities needed to de-
11 velop a new, or use an existing, facility for safely disposing
12 of all low-level radioactive waste with concentrations of
13 radionuclides that exceed the limits established by the
14 Commission for Class C radioactive waste (referred to in
15 this section as 'GTCC waste').

16 "(b) COMPREHENSIVE PLAN.—The Secretary shall
17 develop a comprehensive plan for permanent disposal of
18 GTCC waste which includes plans for a disposal facility.
19 This plan shall be transmitted to Congress in a series of
20 reports, including the following:

21 "(1) REPORT ON SHORT-TERM PLAN.—Not
22 later than 180 days after the date of enactment of
23 this section, the Secretary shall submit to Congress
24 a plan describing the Secretary's operational strat-
25 egy for continued recovery and storage of GTCC
26 waste until a permanent disposal facility is available.

1 “(2) UPDATE OF 1987 REPORT.—

2 “(A) IN GENERAL.—Not later than 1 year
3 after the date of enactment of this section, the
4 Secretary shall submit to Congress an update of
5 the Secretary’s February 1987 report submitted
6 to Congress that made comprehensive rec-
7 ommendations for the disposal of GTCC waste.

8 “(B) CONTENTS.—The update under this
9 paragraph shall contain—

10 “(i) a detailed description and identi-
11 fication of the GTCC waste that is to be
12 disposed;

13 “(ii) a description of current domestic
14 and international programs, both Federal
15 and commercial, for management and dis-
16 position of GTCC waste;

17 “(iii) an identification of the Federal
18 and private options and costs for the safe
19 disposal of GTCC waste;

20 “(iv) an identification of the options
21 for ensuring that, wherever possible, gen-
22 erators and users of GTCC waste bear all
23 reasonable costs of waste disposal;

1 “(v) an identification of any new stat-
2 utory authority required for disposal of
3 GTCC waste; and

4 “(vi) in coordination with the Envi-
5 ronmental Protection Agency and the Com-
6 mission, an identification of any new regu-
7 latory guidance needed for the disposal of
8 GTCC waste.

9 “(3) REPORT ON COST AND SCHEDULE FOR
10 COMPLETION OF ENVIRONMENTAL IMPACT STATE-
11 MENT AND RECORD OF DECISION.—Not later than
12 180 days after the date of submission of the update
13 required under paragraph (2), the Secretary shall
14 submit to Congress a report containing an estimate
15 of the cost and schedule to complete a draft and
16 final environmental impact statement and to issue a
17 record of decision for a permanent disposal facility,
18 utilizing either a new or existing facility, for GTCC
19 waste.”.

20 **SEC. 636. PROHIBITION ON NUCLEAR EXPORTS TO COUN-**
21 **TRIES THAT SPONSOR TERRORISM.**

22 (a) IN GENERAL.—Section 129 of the Atomic Energy
23 Act of 1954 (42 U.S.C. 2158) is amended—

24 (1) by inserting “a.” before “No nuclear mate-
25 rials and equipment”; and

Requirements and Guidance Associated with Cooperating and Commenting Agency Roles

In addition to the Low Level Radioactive Waste Policy Amendments Act of 1985 (LLRWPA), Federal requirements and guidance relating to the decision before the Commission include the following:

- Title 40 of the *Code of Federal Regulations*, (40 CFR) 1501.6 states, “[u]pon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition, any other Federal agency which has special expertise... may be a cooperating agency....”
- 40 CFR 1508.5 defines a “cooperating agency” as, “any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal....”
- 40 CFR 1501.6(c) states, “[a] cooperating agency may in response to a lead agency’s request for assistance in preparing the environmental impact statement... reply that other program commitments preclude any involvement or the degree of involvement requested....”
- Title 10 of the *Code of Federal Regulations* §51.10(b), which implements National Environmental Policy Act of 1969 (NEPA), provides U.S. Nuclear Regulatory Commission (NRC, or the Commission) with flexibility in its decision on whether or not to become a cooperating agency, “... the Commission will... [f]ollow the provisions of 40 CFR 1501.5 and 1501.6 relating to lead agencies and cooperating agencies, except that the Commission reserves the right to prepare an independent environmental impact statement whenever the NRC has regulatory jurisdiction over an activity even though the NRC has not been designated as lead agency for preparation of the statement....”
- Council on Environmental Quality (CEQ) specifies independence for the cooperating agency role, “[i]f the lead agency leaves out a significant issue or ignores the advice and expertise of the cooperating agency, the EIS may be found later to be inadequate.” Further, “disagreements about conclusions to be drawn from the environmental impact statement (EIS) need not inhibit agencies from issuing a joint document, or adopting another agency’s EIS if the analysis is adequate.” With regard to the record of decision (ROD) generated, “[a] cooperating agency with jurisdiction by law may determine in its own ROD that alternative A is the environmentally preferable action, even though the lead agency has decided in its separate ROD that Alternative B is environmentally preferable.” (“Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” 14b [46 FR 18026, 18030 (1981)]).
- Recent CEQ guidance to all Federal agencies emphasizes the efficiency of cooperating agency interactions, “[w]hen more than one federal agency has NEPA responsibilities... then the agencies should work together, either as joint-leads or as lead and cooperating agencies, to avoid redundant, duplicative NEPA work and cooperating agency status is one way to accomplish these responsibilities” (Memorandum for the Heads of Federal Agencies from James L. Connaughton, December 23, 2004, Attachment 2, “Cooperating Agency Report to the Council on Environmental Quality, Frequently Asked Questions and Answers,” p. 2).

Information Supporting The Advantages and Disadvantages for Each NRC Option

I. Cooperating Agency Option

A. Advantages

1. Positions U.S. Nuclear Regulatory Commission (NRC) to better assure that the U.S. Department of Energy (DOE) environmental impact statement (EIS) addresses areas and issues that will increase the potential for NRC to adopt all or part of the EIS. As a corollary, NRC is also positioned to identify key issues early for a potential licensing proceeding, and begin planning for both guidance development and rulemaking activities.

As stated in the DOE advanced notice of intent (ANOI), the scope of the EIS includes specific disposal technologies and locations. The scope of the DOE EIS will likely encompass the scope of an NRC EIS associated with licensing a Greater-than-Class-C (GTCC) disposal facility. Thus, NRC staff will be in a position to adopt the DOE EIS, provided the staff determines that the EIS addresses the environmental impacts as NRC would examine them in its own EIS to support its own licensing decisions. Serving as a cooperating agency will provide for more staff involvement in the preparation of the EIS. Providing this NRC expertise, with early regulatory clarifications, better assures that the environmental impacts associated with licensing a GTCC facility are fully addressed and are more likely to facilitate the NRC licensing decision. Specifically, serving as a cooperating agency increases the likelihood that a single EIS can satisfy both DOE and NRC statutory responsibilities. The cooperating agency role also provides a well-defined construct for interactions with DOE regarding issues such as the formulation of performance criteria and objectives, licensing options, compliance and guidance.

As recently shared by DOE staff, DOE's development of the scope of the EIS and potential disposal options will require DOE to interface with NRC staff in areas such as performance criteria and objectives, licensing options, compliance, and guidance. The NRC will need to address these areas with DOE, regardless of whether NRC takes on a cooperating or commenting role. Additionally, NRC may need to develop technical guidance in order to license GTCC disposal. In its May 25, 1989, *Federal Register* notice (54 FR 22578), the Commission noted that additional technical criteria might be needed for licensing disposal facilities other than "near surface" disposal. If needed, such criteria would be added to Part 61 before licensing an "intermediate disposal facility." Serving as a cooperating agency will allow the staff to identify key technical issues early and begin early planning for technical guidance. This will facilitate timely guidance development and rulemaking activities, as necessary.

The cooperating agency role better positions NRC to provide early, accurate, and timely information that will assist DOE to examine alternatives that are viable within the NRC regulatory framework and, consequently, impact DOE GTCC regulatory compliance and licensing. In general, the areas identified by DOE staff for NRC interaction are common to

all potential license applicants seeking information that supports decisions about their programs. Early NRC interaction to provide information on these areas during license applicant program planning has demonstrated that the applicant develops plans that more effectively implement NRC requirements, which results in fewer NRC and applicant resources expended during the licensing process.

2. Positions NRC to engage in early, two-way communication with stakeholders and the public to identify and address their interests, concerns, and need for accurate and timely explanations of the independent NRC role, requirements, and planning.

Participating in the public process of developing an EIS provides NRC with the opportunity to achieve the strategic Openness goal early, with the potential to build stakeholder and public rapport that will support NRC's efforts throughout both the EIS process and licensing review. Specifically, as a cooperating agency, NRC can actively participate in the scoping process, and will, therefore, be in a position to identify the need for, and provide accurate and timely explanations of its requirements, independent review role and potential licensing structure. During scoping interactions, NRC can directly address emerging stakeholder and public concerns related to the agency's regulatory role and independent assessment. Alternatively, an NRC commenting role will be limited to written input during public comment periods, which may result in dilution amongst other comments and summaries. Further, as a cooperating agency, NRC will be in a better position to request timely discussion and resolution of issues. NRC can also better identify and ensure that issues it views pertinent to satisfying public and stakeholder concerns are addressed, especially those issues relevant to its independent examination and potential adoption of all or part of the EIS.

3. Will save NRC resources, whether NRC engages in either its own EIS process or adopts all or part of the DOE EIS.

The cooperating agency role also presents more opportunities to meet the strategic management goal via efficient use of resources and maintenance of staff technical skills. A cooperating agency agreement with DOE yields a framework for each agency to coordinate timing and efforts associated with its independent role, without repeating each other's work and extending the overall Federal process to achieve safe GTCC disposal. Further, the increased potential for NRC to adopt all or part of the DOE EIS will likely save significant resources, compared to NRC completing its own EIS process without the benefit of these prior EIS interactions (as is the situation for a commenting agency role). Specifically, after participating as a cooperating agency, should NRC determine that it needs to supplement the DOE EIS prior to adopting it, the scope of any such supplement will likely be less than if NRC did not serve as a cooperating agency. Further, cooperating agency interactions will better assure that the staff will be up-to-date on technology, issues, and interests when the license application is submitted for review.

4. Assures consistency with NRC's National Environmental Policy Act of 1969 (NEPA) obligations and Council on Environmental Quality (CEQ) guidance, CEQ cooperating agency guidance, and the principles of efficiency in "good government."

The cooperating agency option is consistent with the Title 10 of the *Code of Federal Regulations* (10 CFR) §51.10(b) provision that, "...[T]he Commission will: ... [f]ollow the provisions of Title 40 of the Code of Federal Regulations 1501.5 and 1501.6 relating to lead

agencies and cooperating agencies” Further, NRC fulfills CEQ definition of a cooperating agency (reference Attachment 4) as it has both “special expertise” and “jurisdiction by law” in this case. Pursuing this option is also consistent with recent CEQ guidance (December 23, 2004; reference Attachment 4), emphasizing that agencies should engage in cooperating agency roles as an efficient arrangement. In other words, efficiency as a matter of “good government” (a phrase currently emphasizing Federal agency decisions as being comparable to the planning and actions of “good business.”)

B. Disadvantages

1. A potential disadvantage of this option is earlier obligation of resources, initially spending slightly more resources than the commenting agency option for the DOE EIS phase of the overall Federal process. However, the cooperating agency option does have the potential for significantly greater resource savings later, during the NRC licensing phase. (See discussion under Advantage I.A.3 above.)

Resources will need to be committed, as already budgeted, upon agreement to become a cooperating agency with DOE. The resource expenditure can also be controlled by establishing an MOU with DOE that clearly delineates the scope and schedule of the staff's activities as a cooperating agency. However, this early commitment of resources may obviate the need to commit significantly more resources later to either supplement or prepare a separate EIS.

2. There is a potential for the public and stakeholders to develop the perception that the NRC cooperating agency activity is not consistent with its independent regulatory charge.

This perception is balanced by the possibility that if NRC does not become a cooperating agency, NRC can be perceived as not fulfilling its NEPA obligations. For example, some individuals will view NRC's expertise as important to fully informing the NEPA process and/or saving Federal government resources by trying to eliminate or limit NRC EIS efforts. However, as described above in I.A.2, the cooperating agency option presents opportunities to address these concerns.

Further, the cooperating agency interactions with the public and stakeholders presents specific opportunities for managing its activities so as to minimize and/or address erroneous perceptions.

II. Commenting Agency Option

A. Advantages

1. The primary advantage of the commenting agency option is to reduce, rather than eliminate, the likelihood that individuals/groups develop the perception that NRC is not acting in an independent regulatory manner.

As a commenting agency, some criticism about NRC meeting its independent role remains likely as NRC engages in any interaction with DOE. Additionally, if NRC decides to adopt the DOE EIS, NRC may still be subject to the perception that NRC is not acting independently.

2. The commenting agency role will initially require fewer resources than the cooperating

agency role.

This decrease in resources is potentially minimal as NRC will need to expend resources for the same or similar activities engaged in under the cooperating agency option, such as: (1) technical review of the draft EIS during the public comment period; (2) attendance at scoping meetings (as a member of the audience); and (3) participation in discussions and presentations addressing NRC positions and/or based on NRC expertise.

B. Disadvantages

1. Expenditure of significant resources for an NRC EIS or supplement to the DOE EIS.

This option will necessitate developing an NRC EIS or adopting and supplementing the DOE EIS as part of the NRC licensing review. Further, selection of the commenting agency option is supported by 10 CFR §51.10, if NRC chooses to engage the provision that “except that the Commission reserves the right to prepare an independent environmental impact statement whenever the NRC has the regulatory jurisdiction over an activity even though the NRC has not been designated as lead agency for preparation of the statement.” Overall, compared to a cooperating agency, NRC resource expenditures as a commenting agency will shift from the DOE EIS phase to the NRC licensing phase and result in a likely overall greater total resource expenditure for the entire Federal process (DOE EIS through licensing phases).

2. Minimal opportunity for the NRC to assure that the DOE EIS fulfills NRC needs and expectations for adoption.

NRC will be required to develop an EIS as part of the GTCC licensing review. If NRC does not participate in development of the DOE GTCC EIS, it will far more likely need to develop its own EIS rather than potentially adopting DOE’s EIS. Specifically, as a commenting agency NRC will have little opportunity to assure that the DOE EIS includes information and addresses issues to the extent that it can replace NRC addressing these areas in its own EIS. In addition, early NRC interactions with license applicants during the program planning and application development process have demonstrated that the applicant develops plans that more effectively implement NRC requirements, which results in fewer resources expended during the licensing process.

3. Limited access to early information and discussions will limit information for both NRC comments on the draft EIS and NRC decisions before and after the EIS.
4. NRC will not realize the benefits of early interaction with DOE.

Early interaction will not be available to assist NRC staff in identifying key technical issues early and in planning for both new technical guidance and rulemaking needed for licensing a GTCC disposal facility. Further, the opportunities to bring the staff up-to-date on information and issues for use at the outset of licensing will, instead, be potentially delayed.

5. NRC will also likely receive some criticism as a result of refraining from participating as a

cooperating agency.

Unlike the cooperating agency option, NRC will not have the opportunity to actively participate in the DOE scoping process directly. Hence, there will be minimal opportunities for early two-way communication of timely exchanges about NRC's independent review role, regulatory requirements, and the potential licensing structure.