

February 19, 2003

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - SECY-03-0009 - DENIAL OF
PETITION FOR RULEMAKING (PRM-63-1) - THE STATE OF
NEVADA

The Commission has approved denial of the petition for rulemaking (PRM-63-1) submitted by the State of Nevada. The staff should incorporate the changes to the Federal Register notice and the letter to the petitioner shown in the attachment.

(EDO)

(SECY Suspense:

2/21/03)

Attachment: Changes to the Federal Register notice and the letter to the petitioner

cc: Chairman Meserve
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
Commissioner Merrifield
OGC
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR

SECY NOTE: THIS SRM AND SECY PAPER WILL BE MADE PUBLICLY AVAILABLE 5
WORKING DAYS AFTER DISPATCH OF THE LETTER TO THE
PETITIONER.

Changes to the Federal Register Notice and the Letter to the Petitioner

Changes to the *Federal Register* Notice

1. On page 1, paragraph 1, line 3, delete the “s” at the end of “wastes”. In line 11, delete “completely”. In the last line delete “and”.
2. On page 2, line 1 from the top, delete “recent”. In line 2, insert a comma after “63”.
3. On page 3, paragraph 1, revise line 2 to read ‘ ... Part 63” (Ppetition) which ...’
4. On page 3, paragraph 2, revise the line to read ‘ ... petition requests the following amendments to Part 63 ; **as discussed below.**’
5. On page 6, middle of the page, insert a period after “43”.
6. On page 7, the next to last paragraph should be single-spaced.
7. On page 8, paragraph 1, delete the last sentence (Petitioner’s proposed ... deficiencies.) and replace it with the following:

Petitioner identifies five basic elements to be added to Part 63: 1) provisions ensuring that geologic isolation is the primary barrier against the release of radiological contamination to the environment, 2) provisions requiring the submission of an affirmative safety case, 3) provisions requiring the verification of the lack of materially adverse or potentially disqualifying conditions for Yucca Mountain following closure of the repository, and 5) provisions relating to the provision of “reasonable assurance” of the safety of the repository. Id. at 39.

8. On page 8, last paragraph, revise lines 6 and 7 to read ‘ ... at 11 - 18. ~~In particular, petitioner believes that the mandate in s~~Section 112(a) **requires** to DOE to issue’
Revise the next to last line to read ‘ ... seismic activity....’ **Petitioner claims that this section obligates the means that NRC to must** set the same’
9. On page 11, paragraph (2), revise the last line to read ‘ ... reconsider issues **already so** recently resolved in the’
10. On page 11, last paragraph, in line 4 replace “Petition” with “Id.”
11. On page 12, paragraph (1), line 2, change the quotation mark to be a closed quotation mark.
12. On page 13, paragraph 1, line 2, insert a comma after “repository”.
13. On page 13, paragraph 2, revise line 2 to read ‘ ... Part 60. { 46 FR 13971 ; **(February. 25,**

- 1981).’ Revise line 3 to read ‘ ... (48 FR 28194 ; (June 21, 1983).’ Correct the cite in line 5 to read ‘ ... Id. at 28195. (48 FR 28195).’
14. On page 14, 1st full paragraph, revise line 9 to read ‘ ... isolation performance.” Id. at (48 FR 28196).’
 15. On page 15, revise the cite in line 1 from the top to read (64 FR 8640 ; (February 22, 1999).’ Revise line 8 from the top to read ‘ ... CFR Part 60.” Id. at (64 FR 8641).’ Revise line 9 from the top to read ‘ ... informed **and** ; performance-based ...’
 16. On page 15, line 1 after the indented text, correct the cite to read ‘Id. at (64 FR 8643).’ In line 2, insert a comma after “barriers”. Revise lines 3 and 4 to read ‘ ... **not assess set numerical goals for** the performance of **individual** those barriers by establishing numerical goals for the performance of individual barriers. See Id. at 64 FR 8647-50 –8650.’
 17. On page 16, in the footnote, line 2, remove the parentheses around the cite. In line 6, revise the cite to read ‘Id. (64 FR 8649 (quotations’ In the last line, revise the cite to read ‘Id. (64 FR 8649).’
 18. On page 18, last paragraph, revise line 1 to read ‘ ... NWPA do not **demand** mandate that NRC’
 19. On page 19, revise line from the top to read ‘ ... an inquiry **for which** where it’ Revise line 7 from the top to read ‘ ... guidelines. Congress **thus** had no need’
 20. On page 19, last paragraph, revise lines 2 and 3 to read ‘ ... characterization plan ,for site characterization activities at YM, which shall’ Revise line 5 to read ‘ ... Section 113(b)(1)(A)(iv) ; See Petition at’
 21. On page 20, revise line 1 from the top to read ‘ ... selection. **On the same theory, petitioner also claims the** and NRC must promulgate’
 22. On page 20, 1st full paragraph, revise lines 4 and 5 to read ‘ ... the YM site. (66 FR 57298, 57311-12 57312; (November 14, 2001).’ Revise the cite in line 11 to read Id. at (66 FR 57312).
 23. On page 21, in the footnote, line 4, replace “Sec.” with “§”. In line 5, delete the 3 periods. In line 6, delete both sets of brackets. In line 10, revise the cite to read ‘ (46 FR 13971 **n.1** (February 25, 1981); .’ In line 13, replace “Sec.” with “§”. In line 15, replace “Section” with “§”.
 24. On page 22, indented text near the top, remove the parentheses around “b”. At the end of the indented text, add a 4th period.
 25. On page 22, 1st full paragraph, line 2, delete the comma after “6”.
 26. On page 23, paragraph 1, line 6, remove the parentheses around the cite and insert “at” before “66 FR”. In line 10, delete “very”. At the end of the sentence in line 12, start a new paragraph.

27. On page 23, last paragraph, revise the cite on the last 2 lines to read 'See 66 FR 55739-40 ~~55740; November 2, 2001.~~'
28. On page 24, revise lines 3 and 4 from the top to read ' ... Subparts E, K and L.' (Id. at 66 FR 55740).⁹.
29. On page 24, 1st full paragraph, revise line 3 to read ' ... geologic setting ;~~i.e.~~, (pre-waste-emplacement' In line 5, insert a close parenthesis after "years". In the last line, revise the cite to read 'See 10 CFR 60.113(a)(2).'
30. On page 24, footnote 9, revise the last line to read ' ... public.' (66 FR 55740. ~~November 2, 2001).~~'
31. On page 25, after the 1st section of indented text, revise the cite to read '(64 FR 8649 ; ~~February~~ 22, 1999).'
32. On page 26, revise line 1 from the top to read 'Id./ at (~~64~~ FR 8650 ; ~~February~~ 22, 1999).'
33. On page 26, revise the cite after the indented text to read '(66 FR 55759 ; ~~November~~ 2, 2001).'
34. On page 27, 1st full paragraph, line 3, replace "§" with "10 CFR".
35. On page 28, in line 1 after the 1st section of indented text, correct the cite to read '(64 FR 8650 ; ~~February~~ 22, 1999).'
 In line 3, replace the semicolon with a comma.36. On page 28, line 3 from the bottom, correct the cite to read '(66 FR 55748 ; ~~November~~ 2, 2001).'
 In the next to last line, insert a comma after "site".37. On page 29, revise line 1 after the indented text to read ' ... requirement is **purportedly** needed'
38. On page 29, footnote 11, revise line 3 to read ' ... in EPA's regulations. ~~Since~~ **Those** regulations'
39. On page 30, in line 1 after the 1st section of indented text, revise the cite to read '(64 FR 8647 ; ~~February~~ 22, 1999).'
 In line 1 after the 2nd section of indented text, insert a comma after "proposal".40. On page 31, in line 1 after the indented text, revise the cite to read '(66 FR 55760 ; ~~November~~ 2, 2001).'
41. On page 31, 1st full paragraph, line 5, insert a comma after "disposal". In line 8, replace "§" with "10 CFR". Revise line 10 to read ' ... and longer), **such** as **those** shown in'
42. On page 33, in line 1 after the indented text, revise the cite to read '(66 FR 55746 ; ~~November~~ 2, 2001).'

43. On page 33, last line, replace “§” with “10 CFR”.
44. On page 34, line 7 from the top, replace “§” with “10 CFR”.
45. On page 34, 1st full paragraph, line 1, insert a colon after “DOE”. In line 3, insert a comma after “concerns”. Revise line 4 to read ‘ ... repository; **provide an** evaluation of how’
Revise line 5 to read ‘ ... performance; and **show** the’
46. On page 34, last paragraph, revise the last line to read ‘ ... risk-informed **and** ;
performance based’
47. On page 35, line 3 from the top, replace the semi-colon with a comma.

Changes to the Letter to the Petitioner

48. In paragraph 2, revise line 3 to read ‘ ... denied because **NRC has** ~~we have~~ determined that: (1) ~~the petition’s assertions that~~ Part 63 is not in full’ Revise line 4 to read ‘ ... as amended, **and** ~~nor~~ the Atomic’ Revise line 5 to read ‘ ... as amended , ~~are completely without substance~~ ; and (2) the petition’ Revise line 6 to read ‘ ... the Commission **has** ~~did not~~’ Revise line 7 to read ‘ ... already considered **ed** ~~in the recent rulemaking that established Part 63;~~ and it would’ In line 8, replace “involved” with “resolved”.
49. In paragraph 3, revise line 1 to read ‘ ... notice **of denial of** ~~denying~~ the petition’
50. In the list of enclosures, revise it to read ‘ ... Notice **of Denial** ~~Denying~~ Petition’