



THE SECRETARY OF ENERGY
WASHINGTON, D.C. 20585

April 18, 1985

Dear Mr. President:

This letter and the enclosed report by the Advisory Panel on Alternative Means of Financing and Managing (AMFM) Radioactive Waste Facilities respond to the legislative mandate of Section 303 of the Nuclear Waste Policy Act of 1982 (P.L. 97-425). As stated in Secretary Hodel's letter of February 27, 1984, the Panel was appointed to conduct a thorough, independent study of the management issue.

In preparing its response to the requirement of Section 303 of the Act, the Department consulted with both the Office of Management and Budget (OMB) and the Nuclear Regulatory Commission (NRC). OMB had no comment. The response from Chairman Palladino of the NRC is enclosed. I also enclose a report on the conclusions and recommendations of the AMFM Panel prepared by a Departmental Review group.

The members of the AMFM Panel have performed a valuable patriotic service. They have examined a range of alternative management structures and, perhaps most important, also suggested a series of potential improvements to the capabilities of the present organization. I am most grateful for the work done by this group of exceptionally well qualified citizens on a purely voluntary basis. I believe both the Department of Energy and the Congress will benefit from the enclosed report.

Yours truly,

A handwritten signature in cursive script that reads "John S. Herrington".

John S. Herrington

Enclosures

Honorable George Bush
President of the Senate
Washington, D.C. 20510

REPORT TO THE SECRETARY OF ENERGY ON THE
CONCLUSIONS AND RECOMMENDATIONS OF THE
ADVISORY PANEL ON ALTERNATIVE MEANS OF
FINANCING AND MANAGING (AMFM) RADIOACTIVE
WASTE MANAGEMENT FACILITIES

by the Review Group

Chairman: Danny J. Boggs
Deputy Secretary

Theodore J. Garrish
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Assistant Secretary
Management and Administration

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Director, Office of Civilian
Radioactive Waste Management

The AMFM Panel has submitted its report "Managing Nuclear Waste - A Better Idea" to the Secretary. The report contains six general conclusions and one general recommendation in Chapter XII. In addition, Chapter X contains 14 specific enhancements ("Key Components of Any Waste Management Structure") that are recommended for implementation by the Office of Civilian Radioactive Waste Management (OCRWM) or any alternative organization.

This paper lists and discusses the 6 general conclusions, the one general recommendation, and each of the 14 "key components".

A. AMFM Panel's General Conclusions and Recommendation

1. Panel's Conclusion:

There are serious defects in OCRWM as a management structure. Recognizing the history of predecessor organizations Atomic Energy Commission (AEC) and the Energy Research and Development Administration (ERDA) and continuing discussion of the liquidation of the Department of Energy (DOE), there is a serious and inherent lack of stability and continuity. This is a major cause of the absence of credibility, which inhibits DOE's effectiveness in carrying out the waste management program.

Discussion:

The Department believes that the past lack of stability and continuity was largely a result of the controversial nature of the program and the associated lack of a clear mandate from the Congress prior to enactment of the Nuclear Waste Policy Act (NWPA). The credibility of both the program and its management has improved substantially since enactment of the NWPA. Another change in organization would undoubtedly detract from, rather than enhance, this credibility.

Recommended DOE Position:

The activation of OCRWM and appointment of a permanent Director have improved the credibility of the waste management program. Retaining the present management structure, at least through the siting and licensing phases, will ensure the maintenance of adequate stability and continuity. Another change in organizational structure would weaken the stability and credibility.

2. Panel's Conclusion:

Waste management, as a business, has a number of distinct phases with which any organization would find it difficult to cope. The most troublesome phase of the overall waste program is the selection and approval of a repository site. Regardless of organizational form, the site selection process would be enhanced by use of a siting advisory council.

Discussion:

The Department is in complete agreement that the program would be difficult for any organization and that the siting phase is the most troublesome. However, the NWPA provides extensive, and adequate, provision for consultation and cooperation with affected constituencies, and employment of a siting advisory council now would seriously delay the critical siting process. The siting advisory council is discussed more fully later as one of the 14 "Key Components".

Recommended DOE Position:

The NWPA provides adequate mechanisms for consultation and coordination with affected parties and sufficient protection of constituent interests in the siting of a repository. A siting council would be counterproductive.

3. Panel's Conclusion:

There are several organizational forms, including private corporations, more suited than DOE for managing the construction and operation phases of the program. Once a site has been selected and licensed, the programmatic responsibilities would be quite different and could be transferred or contracted to a different organization.

Discussion:

DOE has no serious disagreement with the Panel's conclusion. However, in actual practice, the construction and operation of a repository would be carried out by a private firm, or firms, under contract with either DOE or a successor organization. Federal oversight would have to continue throughout the construction, operation, and the closure and decommissioning phases because of the program's potential impact on the environment and the public health.

Recommended DOE Position:

Construction and operation of a repository could be transferred to a different type organization but, because of the need for continuing Federal oversight, such transfer might not be of any particular benefit to the program. A decision should be postponed until after the site for the first repository has been approved.

4. Panel's Conclusion:

An immediate effort must be made to improve the credibility, internal flexibility and cost-effectiveness of OCRWM.

Discussion:

Credibility was discussed under conclusion 1 and is not further addressed here.

Internal flexibility and cost-effectiveness were two of the organizational tests used by the Panel in its study.

Members of the Panel believed the management of the program would be more efficient if the organization's personnel activities were not constrained by Civil Service regulations, conflict of interest rules and political clearance of appointed officials.

The Panel recognized that it is difficult to achieve cost-effectiveness because the classical motivation for efficiency -- the expectation of profit -- is lacking in this "business". Therefore, personnel flexibility would be the means for achieving cost-effectiveness.

A Federally-chartered corporation would be exempt from Civil Service regulation. The ability to pay larger salaries should enable the organization to attract better qualified personnel, but the profit incentive for efficiency would still be lacking. In addition, over 85 percent of the OCRWM budget is expended by contractors and, therefore, most of the personnel employed by the program are already in "exempt" firms. Nevertheless, it is true that OCRWM has experienced difficulty in acquiring the quality personnel needed to manage the program. Personnel flexibility is discussed as one of the 14 "key components".

Recommended DOE Position:

DOE agrees that cost-effectiveness is a major management objective. It has already employed a private accounting firm

to ensure that the program meets high accounting standards in its business practices. The Department will also study the Panel's recommendation that a private contractor be hired specifically to ensure optimum economy and efficiency. In addition, either the personnel flexibility available to a corporation or exemption of OCRWM from appropriate Civil Service regulation could improve management capabilities.

5. Panel's Conclusion:

No modification to the DOE/OCRWM organization would provide adequate stability and continuity.

Discussion:

The Panel believes that this is a major problem for OCRWM, or any Federal entity, whose senior staff and their supervisors serve at the pleasure of the President. Beyond this, the Panel cites the history of the program under three different agencies and multiple program structures. It concedes that the record has shown marked improvement under DOE, particularly since the enactment of NWPA. "But four decades of organizational turmoil cannot be dissipated over night."

The Department believes that management of nuclear waste is clearly a Federal function because of the potential impacts of the program on the environment and the public health. This implies that the program must be subject to a considerable degree of political accountability. Changes in the Administration result in some management instability, but most staff-level positions are unaffected. The NWPA provides sufficient constraints to ensure the program is not subject to undue political influence.

Recommended DOE Position:

Political accountability to both the Administration and the Congress, i.e., the elected representatives of the American people, is essential and should be retained.

6. Panel's Conclusion:

The Panel's preferred alternative organization is a Federally chartered corporation (FEDCORP).

Discussion:

FEDCORP is envisioned as a public corporation chartered by Congress. It would be a single-mission, non-profit, organization with a board of directors appointed by the President

and subject to confirmation by the Senate. Board members would have staggered terms to provide continuity. It would embody all the "Key Components" in Chapter X of the report. The Panel members were far from unanimous in this choice. The only actual vote taken was on September 26, 1984, when just 7 of the members, a bare majority, were in favor of this alternative.

It is not clear that a board of directors would be an effective decision-making body in dealing with the inherent dichotomy between a tight schedule of performance and the extensive need for public consultation, cooperation and participation.

Another major reservation concerning FEDCORP is the possibility that it would be less accountable, politically, to affected interests such as the states. This concern was expressed by state government representatives on the Panel who abstained from the vote for FEDCORP. A public corporation would also be less effective than a Federal agency in intergovernmental relations and would introduce special considerations in licensing and regulatory activities.

Recommended DOE Position:

Especially during the critical siting and licensing phase of the program, a Federal agency is clearly superior to another organizational form. The need for Government oversight continues throughout the construction, operation, and the closure decommissioning phases. Since, in actual practice, these phases would be performed by private contractors, under Federal oversight, the possible management advantages of transitioning to a new organizational form would be more than offset by the difficulty in amending the current legislation to effect such a change.

7. Panel's Recommendation:

Investigation should be undertaken immediately of the steps necessary to implement such a corporation.

Discussion:

The issue of whether FEDCORP is an appropriate organization for nuclear waste management has been addressed above. The major remaining question is whether steps should be taken to amend the NWPA.

Representatives of both state governments and the utility industry expressed strong dissent in presentations to the

Panel during September. Both groups stated their opposition to reopening the NWPA to any amendments at this time and expressed the opinion that the present organization was not a problem to them.

An investigation (or development of legislation) of steps to change the organizational structure would create uncertainty, especially now, during the critical siting phase of the program. This could result in delays in implementation, both because of the effect upon Federal staff and the constituencies affected by the program.

Recommended DOE Position:

There is no known constituency in favor of amending the NWPA at this time. In fact, representatives of the most affected groups would resist any attempts to change the legislation. Therefore, it would be unwise to initiate such an investigation at this time.

B. "Key Components For Any Waste Management Organization"

The 14 "key components" recommended by the Panel for implementation are discussed and evaluated as potential enhancements to OCRWM.

1. Milestone Reevaluation and Achievement.

Project milestones should be reconsidered and reevaluated in the context of what will actually be required to accomplish specific tasks taking cognizance of technical requirements, logistics and institutional relationships. This should include the formulation of a contingency planning process which will effectively deal with unforeseen problems and provide a means for adjusting to change while keeping the project on schedule. The project decision schedule called for in the Nuclear Waste Policy Act, which provides the mechanism for a balance between schedule and participation, should be formulated, agreed upon, and published. Once milestones have been reevaluated and set, they must be met on schedule.

Discussion:

The Department agrees with the Panel's recommendation. OCRWM has missed some important milestones established by the NWPA, and this has tended to diminish the credibility of the program. OCRWM, is reevaluating the schedules and preparing contingency plans in developing the Mission Plan. A draft Project Decision Schedule has been completed and submitted to affected agencies for review and comment.

Recommended DOE Position:

OCRWM is implementing this recommendation.

2. Waste Fund Oversight Commission.

A blue ribbon advisory commission drawn from those constituencies most concerned with avoiding an increase in the one mill per kilowatt hour fee should be established to provide policy guidance to the executive(s) directly responsible for managing the radioactive waste disposal organization. This commission would be specifically charged with providing alternatives to fee increases. Members of this commission should be drawn from the nuclear utilities and ratepayer representatives, probably represented by state public utility commissions through the National Association of Public Utility Commissioners.

Discussion:

The Department agrees that avoiding an increase in the disposal fee is an important objective and is placing emphasis upon obtaining cost-effective performance of the program. OCRWM has continued to provide the utilities and Public Utility Commissioners with full information about all its activities, including financial statements and cost analyses, but has not established a formal advisory commission.

Advantages:

- o Utilities are experienced in nuclear power plant construction and regulation and could provide valuable advice on improving cost-effective performance of the program.
- o A formal advisory role in the program would respond to utility concerns and reduce their apprehension and criticism about the management of the program.
- o Changes in the fee, if necessary, would be more readily accepted.
- o The recommendation could be implemented by OCRWM without change in legislation.

Disadvantages:

- o Addition of an advisory group may upset the delicate checks and balances between the various constituencies now built into the NWPA.

- o An advisory group may give utilities an effective veto over programmatic decisions by forcing OCRWM to defend itself publicly for any rejection of the group's advice.
- o Utilities could become more critical if their advice were rejected.
- o Establishment of an advisory group could result in an over-emphasis on cost-effectiveness, as opposed to health, safety and environmental concerns.
- o A significant amount of OCRWM staff time would be required to support an advisory group.

Recommended DOE Position:

No action should be taken at this time, but further study may be warranted in the future.

3. Advisory Siting Council.

An Advisory Siting Council should be established to provide input to, and oversight for, the siting process to whatever entity is charged with the ultimate site selection responsibility. The Advisory Siting Council would provide input to the siting process and review and comment on the siting recommendation(s) made by the site selection authority. The Advisory Siting Council would be composed of stakeholders (e.g. states, tribes, environmental groups) most concerned with siting issues.

Discussion:

The NWPA contains substantial and specific requirements for consultation and cooperation with states and Indian tribes who are affected directly by siting decisions. The Department has gone beyond the letter-of-the-law to provide ample opportunity for constituent participation in the siting process. Several steps in the critical site selection phase have already been completed. Under NWPA, states receive grants to assist them in monitoring and participating in the site characterization and selection process. The establishment of a Siting Advisory Council at this time would result in a substantial delay in the selection and site characterization schedule.

Advantages:

- o A properly balanced advisory body could enhance the political climate for the acceptance of site selection decisions.

- o Public interest groups would be provided a formal role in the site selection process; this could lessen political tension.
- o Legislation is not required for implementation.

Disadvantages:

- o Establishing an advisory council may upset the delicate checks and balances between the various constituencies now built into the NWPA.
- o The Council role would conflict with the consultation and cooperation activities of affected states.
- o It would require several months for members to become fully knowledgeable and would cause confusion and potentially significant delays in the site characterization and selection process.
- o A significant amount of staff time would be required to support the council.

Recommended DOE Position:

An Advisory Siting Council would detract from, rather than enhance, the participation rights of the affected states and Indian tribes under the NWPA. It would delay the critical site characterization and selection process. It has limited and obscure advantages and substantive and real disadvantages and should therefore be rejected.

4. Scientific Peer Review Board.

A Scientific Peer Review Board should be established to provide oversight in the siting process to whatever entity is charged with the ultimate site selection responsibility. The Scientific Peer Review Board would be charged with the responsibility of reviewing and commenting on the siting recommendation(s) made by the site selection authority. This Board should be a technical advisory group, drawn from the scientific and engineering communities conversant with waste management. This Board would have staff and access to all program information and activities. The Board would also be available to address other technical issues on a required basis at the request of the radioactive waste management organization.

Discussion:

OCRWM now makes extensive use of scientific peer reviews and will continue to do so throughout the site characterization and selection process. However, a single Scientific Review Board could not encompass the diversity of expertise needed for the variety of research undertaken. Scientific peer review is clearly beneficial and, in fact, essential.

Proposed DOE Position:

The Department has implemented this recommendation, but has chosen to employ a number of different groups in preference to a single "board".

5. State and Tribal Technical Review Capability.

Under the Nuclear Waste Policy Act, states and Indian tribes are provided the opportunity to undertake independent review of repository siting actions occurring at locations within their boundaries. The radioactive waste management organization should enter into negotiations with potential host states and affected Indian tribes to work out binding agreements which set forth procedures that will enable states to carry out these review responsibilities. The AMFM Panel supports efforts to strengthen state and tribal technical capacity to monitor the repository program. The radioactive waste management organization should encourage state efforts in this area and in the use of consultation and cooperation agreements as provided in the Nuclear Waste Policy Act. This will reinforce the commitment of financial assistance to states and tribes and provide other procedural protections to assist states in independently reviewing and monitoring waste management activities. Increased technical capacity of the states and tribes will enhance program credibility and provide the confidence necessary for achieving national objectives.

Discussion:

As of December 31, 1984, the Department had provided \$13,694,532 in grant assistance to states, Indian tribes and their associations.

Recommended DOE Position:

The Department has implemented this recommendation in full compliance with the NWPA.

6. Local Economic Development.

The Nuclear Waste Policy Act makes provision for financial assistance to mitigate potential impacts caused by the radioactive waste disposal function and associated facilities development. The radioactive waste disposal organization should develop and offer an array of specific incentives to communities that are potential hosts for a repository. This would give communities potentially affected a clear understanding of what socioeconomic assistance is required and possible. It may also be beneficial to offer incentives and resources to states and tribes beyond those required to mitigate specific impacts. Providing such economic benefit programs may encourage states, tribes and local communities to carefully reflect on how a repository might be integrated with an area and provide a net benefit to the community. This type of encouragement should not, however, have any impact upon the technical sufficiency of the radioactive waste disposal program.

Discussion:

The Department is currently providing assistance to the affected states and Indian tribes for the study of potential economic impacts. As the program progresses, appropriate assistance for the mitigation of adverse impacts will be provided in accordance with the NWPA. A program to offer explicit incentives to accept a repository, in addition to the mitigation of adverse impacts, would not appear appropriate.

Recommended DOE Position:

The Department has appropriately implemented this recommendation.

7. Public Education and Information.

There is a strong public interest in building a wide understanding of radioactive waste disposal and the management of this process in states which are candidates to host repositories and in states through which radioactive waste must travel. The radioactive waste management organization should undertake an effective education and public involvement program to present the facts associated with radioactive waste disposal and repositories. Such an education program must be structured so that it is perceived by the public as helpful and useful and is not interpreted to be a "sell" campaign. This program need not and should not be carried out solely by the radioactive waste management organization. Potential host states should be funded to assist in carrying out activities to increase citizen awareness

and understanding of the national radioactive waste disposal program. The radioactive waste management organization's education efforts should be closely coordinated with those at the state level and should not infringe on state programs.

Discussion:

The Department supports this recommendation. OCRWM has an outreach program and is preparing plans to improve its educational activities. Assistance is available to the states for their educational programs.

Recommended DOE Position:

The Department has implemented this recommendation.

8. Oversight Contractor.

A firm experienced in providing oversight services for large technical contracts should be engaged to provide oversight to the radioactive waste disposal organization. This firm would serve as an internal consultant, using its access to all program activities to identify emerging problems and marshal the staff and other resources needed to resolve them. The primary focus would be on schedule and cost control, although general technical oversight would clearly be within its scope. The oversight contractor would provide the mechanism to facilitate policy level understanding of design tradeoffs, technical licensing issues and state/tribal/local concerns. It would enhance communication and coordination of field and site specific activities. To assure the avoidance of conflicts of interest, the firm selected for this oversight role, as a condition of being awarded this contract, must not have had any previous contracts with OCRWM or its predecessor organizations and would specifically be prohibited from obtaining any future contracts with the radioactive waste disposal organization.

Discussion:

This appears to be a recommendation to employ a contractor to advise OCRWM on all aspects of the management of the radioactive waste program. In part this would appear to duplicate the function of the proposed Waste Fund Oversight Commission as "the primary focus would be on schedule and cost control." It would also appear to duplicate some of the "consulting" services now provided by Roy F. Weston, Inc. It is not obvious that the addition of yet another contractor would further enhance program integration, or communication and coordination of field and site-specific activities.

Advantages

- o If contractor is compensated on a fixed fee plus incentives basis, and incentives are tied to demonstrable cost savings to the program, this may prove a cost-effective proposal.
- o An "oversight" contractor may help ensure the development and implementation of an efficient and effective program management system.
- o May demonstrate OCRWM commitment to cost-effectiveness.
- o May reduce political concerns about management of the program.
- o Can be implemented without legislation.

Disadvantages:

- o Could force OCRWM to have to defend publicly any rejection of a contractor recommendation.
- o Could be costly, both in contract dollars and staff time.
- o Could result in overemphasis on costs, versus technical, environmental, health, safety and social concerns.

Recommended DOE Position:

There are no compelling advantages evident now, but the oversight contractor and the Waste Fund Oversight Commission may be made the subject of future studies if conditions warrant.

9. Special Regulatory Counsel.

It is essential that the radioactive waste disposal organization have a dedicated counsel to handle regulatory and other legal affairs. The best way to accomplish this is through engaging the services of a private law firm experienced in the Nuclear Regulatory Commission (NRC) licensing process. The law firm would provide continuing counsel for the repository licensing process and advice to the radioactive waste disposal organization on how to handle its relationship with its regulator, the NRC. This firm should be selected through competitive bidding.

Discussion:

Legal support provided to OCRWM by DOE's Office of General Counsel is currently adequate. However, it is true that DOE has

little experience as an NRC licensee. Also, the NRC will be applying new regulations to first-of-a-kind facilities, and the regulatory environment is uncertain.

Advantages:

- o The employment of an experienced law firm could provide assurance that expert regulatory legal counsel is available in a timely manner.
- o Would provide expert guidance in pre-application documentation and relationships with NRC.
- o Could avoid delays in the licensing process that might be caused by inexperience on the part of DOE.
- o Legislation is not required to implement this recommendation.

Disadvantages:

- o Would add substantially to program costs.
- o OCRWM already has staff members with considerable NRC experience.
- o Actual benefits are unknown.

Recommended DOE Position:

Outside legal counsel may be appropriate later in the process if special problems occur. No action is warranted now.

10. Private Accounting Firm.

It is essential that the radioactive waste disposal organization have dedicated auditors to document expenditures and provide a basis to judge the progress of the program. Such documentation should be subject to business-type rather than government-type accounting standards and practices. Thus, a private sector accounting firm should be retained by the radioactive waste disposal organization to prepare annual financial statements on the program. These records should be open to the General Accounting Office (GAO), the Office of Management and Budget (OMB), and the general public.

Discussion:

DOE, as a result of a competitive solicitation initiated in March 1984, signed a contract with Main Hurdman, a private certified public accounting firm, in September 1984. Main Hurdman will

examine the financial statements of the Nuclear Waste Fund and evaluate these statements in accordance with generally accepted accounting principles adopted for the private sector.

Recommended DOE Position:

OCRWM has implemented this recommendation.

11. Tenure of Chief Executive Officer.

The executive directly responsible (no matter how titled) for managing the radioactive waste disposal program should be given tenure which is not subject to changes in Administration and/or of agency heads. Although tenure of this nature is recommended, the AMFM Panel does not intend that the manager be given a guaranteed job from which he/she cannot be fired for cause.

Discussion:

The AMFM Panel was concerned that the waste program be adequately insulated from political interference, while remaining appropriately responsive. However, there is no support in the Panel's report for contention that the program has suffered from excessive political influence. This recommendation also conflicts, to an extent, with the conclusion by the Panel that there should be greater personnel flexibility. The Panel, thus, would provide tenure for the Director and remove it for the staff.

Advantages:

- o A tenured Director would provide an increased degree of stability and continuity.
- o The Director would be less likely to respond to political pressure.

Disadvantages:

- o Legislation would be required, and there is general resistance to reopening the NWPA.
- o The Director, if not responsive to the Administration, could become too isolated to be effective.
- o Political accountability essential to management of a government program could be weakened.

Recommended DOE Position:

The recommendation is inconsistent with the need for political accountability and should be rejected.

12. Personnel Flexibility.

Any radioactive waste disposal organization should have the flexibility in personnel matters to accomplish the business and technical requirements necessary to implement radioactive waste disposal. Salaries and benefits should be set at competitive levels and at levels the radioactive waste disposal organization deems to be appropriate. Hiring and termination practices should be as flexible as in the private sector. A personnel system should be implemented which will enable the organization to get the best people and manage them effectively.

Discussion:

OCRWM has experienced some difficulty in recruiting the most qualified technical and management staff because of both salary and conflict-of-interest constraints imposed by current laws and regulations. However, this is offset, at least to a degree, by the positive impact on recruiting of the security provided by the Civil Service system. Exemption from Office of Personnel Management (OPM) classification standards, with retention of other Civil Service benefits, would improve the ability of OCRWM to both recruit and retain the high-quality technical and managerial staff needed for effective management of the program.

Advantages:

- o Higher grades (and, therefore, higher pay) would improve the recruitment and retention of qualified staff.
- o Greater flexibility to hire and fire staff would provide incentives to improve productivity.

Disadvantages:

- o Such exemptions would only ease grade and salary restrictions, but not provide complete personnel flexibility for the present organization.
- o Exemption of OCRWM from OPM classification standards could require legislation.

Recommended DOE Position:

While exemption from OPM classification standards would be beneficial, total personnel flexibility could not be obtained for OCRWM. DOE should consider means to designate OCRWM as an "excepted" program, but no action is warranted now.

13. Staff Incentives Program.

Regardless of whether radioactive waste management is moved to a new organization or remains at OCRWM, monetary rewards for personnel that exhibit outstanding performance are possible (bonuses are presently available to Senior Executive Service (SES) personnel). The range of other possible personnel incentives aimed at superior performance is enormous and by no means limited only to monetary rewards. In view of this range, it is reasonable to expect that any potential radioactive waste management organization could devise a persuasive plan for staff incentives either within or outside the framework of OPM policies.

Discussion:

Incentives for outstanding performance are available within Civil Service regulations to both SES and General Schedule employees. In that regard, HR 2300 has strengthened considerably the existing merit pay legislation. In addition, incentives to encourage cost-effectiveness can be included in developing performance standards upon which staff are evaluated for possible cash bonuses or within-grade step increases.

Advantages:

- o Both cash and promotion incentives enhance productivity and the technical quality of employee performance.
- o Legislation is not required.

Disadvantages:

- o Incentive systems may be subject to political abuse.
- o Incentive payments can be excessive and unrelated to benefits to the program.
- o Incentive programs are difficult to administer properly.

Recommended DOE Position:

OCRWM currently uses a performance incentives program. However, this program should be expanded to include specific incentives for cost-effectiveness.

14. Congressional Oversight.

At the present time, seven Senate and six House of Representatives Committees, and a total of ten Subcommittees, oversee the

radioactive waste disposal program. This large number of Congressional committees requires extensive servicing and has the potential to cause schedule delays and increase costs. The AMFM Panel recommends that the Congress attempt to simplify the Congressional oversight process.

Discussion:

The Department believes that adequate Congressional oversight is essential. The proper degree and structure of this oversight can be determined only by the Congress.

Recommended DOE Position:

This recommendation should not be supported as it is outside the purview of the Department.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 22, 1985

CHAIRMAN

The Honorable John S. Herrington
Secretary of Energy
Washington, D.C. 20585

Dear Secretary Herrington:

In response to the request by Deputy Secretary Boggs on February 19, 1985 for consultation on the report, Managing Nuclear Waste-A Better Idea, I am pleased to submit the enclosed comments. Although the report was prepared by the Department's Advisory Panel on Alternative Means of Financing and Managing Radioactive Waste Facilities, I understand from your letter that when the report and DOE's internal evaluation are submitted to Congress, they will constitute the Department's fulfillment of its responsibilities under Section 303 of the Nuclear Waste Policy Act of 1982. This consultation on the study follows earlier interaction between the Advisory Panel and the NRC staff, including a briefing by the Director of the Office of Nuclear Material Safety and Safeguards on February 22, 1984 and other guidance on regulatory considerations provided to the Panel by NRC staff members throughout the period of the Panel's deliberations.

As I indicated in my July 8, 1983 letter to Secretary Hodel on this subject, I have limited my consultation on the report to the examination of potential impacts on NRC regulatory responsibilities if the report's recommendations are adopted and an alternative waste management organization is established. I have not addressed the report's accuracy or judgments of policy, such as its assertion that a corporate-type waste management organization would be more responsive to NRC and other regulators than a Federal agency would be. Similarly, I have not commented on the draft report prepared for you by the DOE internal review group, as it addresses the merits of transferring waste management functions to an alternative organization. I can inform you, however, that our relationships with your Department in carrying out NRC responsibilities under the Nuclear Waste Policy Act of 1982 have been progressing in a proper and professional manner to date.

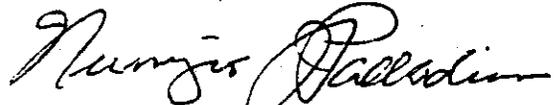
The enclosed comments do highlight regulatory uncertainties that arise from the Panel's recommendations, and these uncertainties would need to be specifically addressed in legislation if the recommendations are adopted. Therefore, I trust that these

comments will be provided to Congress as a part of your submittal of the final study results. My primary areas of concern regarding the transfer of waste management functions from DOE to an alternative organization are impacts on: safeguards responsibilities; financial protection requirements; repository post-closure considerations; implementation of the National Environmental Policy Act; and specific impacts relating to the Nuclear Waste Policy Act requirements. Each of these potential regulatory impacts is addressed separately in the enclosed comments.

If there are any questions regarding these comments, please refer your staff to Mr. Joseph O. Bunting, Chief of the Policy and Program Control Branch in the NRC Division of Waste Management, at 427-4590.

Thank you for the opportunity to consult on this subject.

Sincerely,



Nunzio J. Palladino

Enclosure:
As Stated

ENCLOSURE 1

Comments
on

Managing Nuclear Waste: A Better Idea
Report of the DOE Advisory Panel on
Alternative Means of Financing and Managing
Radioactive Waste Facilities, January 1985.

March 1985

Safeguards

Under the authority of the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974, the Department of Energy and the Nuclear Regulatory Commission are responsible for ensuring adequate safeguarding of all nuclear facilities, to promote the common defense and security. The Commission determined in issuing 10 CFR Part 60, regulations governing the disposal of high-level wastes in geologic repositories, that certain findings regarding DOE's safeguards plans would be appropriate without further NRC safeguards review. Thus, because of DOE's own statutory responsibility to protect the common defense and security, DOE is only required to certify in its license application to NRC that it will provide the same safeguards at the geologic repository operations area as it requires at comparable DOE surface facilities (10 CFR §60.21(b)(3)). This will constitute a rebuttable presumption that the safeguards are adequate (10 CFR §60.31(b)). DOE is also required to describe in its license application the physical security plan for protection against radiological sabotage (10 CFR §60.21(b)(4)).

If the waste management program is transferred to a non-DOE entity, a comprehensive review of safeguards concerns at a waste repository will be necessary to determine how safeguards should be enforced by NRC. This issue should be clearly addressed in the consideration of any legislation transferring the program to a non-DOE entity.

Financial Liability

Appendix E of the Panel report describes the liability issue among those that were not substantively addressed by the AMFM Panel (p. E-9). With respect to recommendations for alternative organizational forms to DOE for managing the high-level waste program, Appendix E states:

It is essential that whatever organization ultimately has program responsibility have clear authority to deal with any accident, however remote the possibility. The Price-Anderson Act can be amended to apply to repository operations or other legislation can be developed.

It is suggested that any transfer of waste management responsibilities from DOE to a new organization be accompanied by authorization for that organization to extend indemnification to its contractors. As stated in the Panel report, this could be achieved through amendments to the Price-Anderson Act, if that statute is considered the appropriate vehicle for providing liability coverage to a repository or other waste management facility, or through separate authority. Alternatively, it is also possible that NRC could exercise authority under the Price-Anderson Act to indemnify the repository licensee. It would be helpful if

legislation establishing the waste management organization specified which agency or organization would be responsible for indemnification of waste management activities.

Post-Closure

The implementation of the AMFM study recommendations may result in a significant impact on controls for the post-closure period of a high-level waste repository. The waste management organization would need to assume responsibility for active institutional controls at the repository surface area for a period into the future beyond the completion of the organization's major activities. The AMFM study alludes to this problem by stating that an alternative organization "would probably be less desirable for monitoring after closure, which seems to involve custodial functions best performed by Federal or State agencies whose missions are related to protection of the environment" (Chapter XI, p. 9). However the report makes no specific recommendation regarding the performance of the active control function.

NRC requires the license amendment for permanent repository closure to include descriptions of "the program for post-permanent closure monitoring of the geologic repository" and measures "to regulate or prevent activities that could impair the long-term isolation of emplaced waste within the geologic repository" (10 CFR §60.51(a)). Long-term monitoring and other active institutional controls are not envisioned under this requirement, and should not be relied upon to verify safe isolation of waste in the post-closure period. The need for short-term monitoring, however, justifies the concern identified in the AMFM report. The waste management organization will need adequate organizational and financial resources to perform this function. Alternatively, the responsibility for implementing active control measures could be turned over to another agency of the Federal government following closure. Any legislation transferring waste management responsibilities to a new organization should take these post-closure considerations into account.

NEPA Compliance

The National Environmental Policy Act of 1969 requires the preparation of an Environmental Impact Statement in connection with any major Federal action significantly affecting the environment. Under Section 114(f) of the Nuclear Waste Policy Act, the Secretary's recommendation of a site to the President for development as a repository is to be considered a major Federal action requiring the preparation of an EIS by DOE as part of the basis for the site recommendation. Section 114(f) also authorizes the NRC to adopt DOE's EIS to the extent practicable as part of NRC's satisfaction of its responsibilities under NEPA. If a new waste management organization is created by Congress, the

NEPA provisions of Section 114(f) would still apply only if that organization would be a Federal agency automatically subjected to NEPA or, if not, was explicitly required to comply with NEPA. Otherwise, the recommendation of a final site to the President would neither be a proposal for Federal action nor otherwise subjected to NEPA. Under those conditions, the first EIS for a repository would be prepared by the NRC as part of its licensing process. This would have the effect of delaying the preparation of an EIS until after the site selection process, contrary to the current scheme in NWPA. Transfer of full responsibility for the EIS to the NRC would also delay the licensing process because the NRC could not begin to prepare an EIS until after it had reviewed the applicant's environmental report. Finally, the NRC would require substantially more resource to prepare a full EIS as compared with the more limited resource needs associated with the preparation of only the parts of an EIS not adoptable from DOE's EIS.

Participation of Affected Parties

The procedures required under NWPA afford the opportunity for parties affected by waste management decisions to participate in the site selection process. It is essential that any transfer of functions to an alternative organization follow a careful review that assures these procedures remain in effect.

Judicial Review

Several specific NWPA actions are subject to judicial review under the Administrative Procedure Act. If waste management responsibilities were transferred to a non-Federal agency, that statute would no longer be applicable and, therefore, new legislation would be necessary to make the actions of a successor organization subject to the same timely judicial review as DOE's actions.

Additional Licensing Considerations

Licensing is not required for DOE to use radioactive materials in site characterization (10 CFR §60.7(a)) or in a Test and Evaluation Facility (NWPA §217(f)(2)). If an alternative waste management organization made such use of radioactive materials, licensing would be required. In the case of a Test and Evaluation Facility, this could represent a significant change in the nature of the Commission's involvement, unless specifically addressed in the legislation creating the new organization.