

matters in paragraph (b) of this section), unless a contention is admitted that a nuclear reactor does not fit within one or more of the site parameters in the early site permit, or a petition is filed which alleges either that the site does not conform to the site characteristics in the early site permit, or that the terms and conditions of the early site permit should be modified.

(i) A contention that a nuclear reactor does not fit within one or more of the site parameters included in the site permit may be litigated in the same manner as other issues material to the proceeding.

(ii) A petition which alleges that the site does not conform to the site characteristics in the early site permit must include, or clearly reference, official NRC documents, documents prepared by or for the permit holder, or evidence admissible in a proceeding under subpart G of part 2 of this chapter, which show, *prima facie*, that the site does not conform to the site characteristics. The permit holder and NRC staff may file answers to the petition within the time specified in 10 CFR 2.730 for answers to motions by parties and staff. If the Commission, in its judgment, decides, on the basis of the petitions and any answers thereto, that the petition meets the requirements of this paragraph, that the issues are not exempt from adjudication under 5 U.S.C. 554(a)(3), that genuine issues of material fact are raised, and that settlement or other informal resolution of the issues is not possible, then the genuine issues of material fact raised by the petition must be resolved in accordance with the provisions in 5 U.S.C. 554, 556, and 557 which are applicable to determining application for initial licenses.

(iii) A petition which alleges that the terms and conditions of the early site permit should be modified will be processed in accordance with 10 CFR 2.206. Before construction commences, the Commission shall consider the petition and determine whether any immediate action is required. If the petition is granted, then an appropriate order will be issued. Construction under the construction permit or combined license will not be affected by the granting of the petition unless the order is made immediately effective.

(iv) Prior to construction, the Commission shall find that the terms and conditions of the early site permit have been met.

(b) An applicant for a construction permit, operating license, duplicate design license, or combined license who has filed an application referencing an early site permit issued under this

subpart shall update and correct the information that was provided under § 52.17(b), and discuss whether the new information materially changes the bases for compliance with the applicable requirements. New information which materially changes the bases for the Commission's determination on the matters in § 52.17(b) must be subject to litigation during the construction permit, operating license, duplicate design license, or combined license proceeding in the same manner as other issues material to those proceedings.

(c) An applicant for a construction permit, operating license, duplicate design license, or combined license who has filed an application referencing an early site permit issued under this subpart may include in the application a request for a variance from one or more elements of the permit. In determining whether to grant the variance, the Commission shall apply the same technically relevant criteria as were applicable to the application for the original or renewed site permit. Issuance of the variance must be subject to litigation during the construction permit, operating license, duplicate design license, or combined license proceeding in the same manner as other issues material to those proceedings.

Subpart B—Early Site Reviews

§ 52.41 Scope of subpart.

This subpart sets out procedures for the filing, staff review, and referral to the Advisory Committee on Reactor Safeguards (ACRS) of requests for early review of one or more site suitability issues relating to the construction and operation of certain utilization facilities separately from and prior to the submittal of applications for construction permits, combined licenses, or duplicate design licenses for the facilities. The subpart also sets out procedures for the preparation and issuance of Staff Site Reports and for their incorporation by reference in applications for the construction and operation of certain utilization facilities. The utilization facilities are those which are subject to § 51.20(b) of this chapter and are of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter or are testing facilities. This subpart does not apply to proceedings conducted pursuant to subpart F of part 2 of this chapter.

§ 52.43 Filing and contents of applications.

(a) Any person may submit information regarding one or more site suitability issues to the Commission's Staff for its review separately from and

prior to an application for a construction permit, a combined license, or a duplicate design license for a facility. The submittal must consist of the portion of the information required of applicants for construction permits by §§ 50.33(a) through (c) and (e) of this chapter, and, insofar as it relates to the issue(s) of site suitability for which early review is sought, by §§ 50.34(a)(1) and 50.30(f) of this chapter. Information with respect to operation of the facility at the projected initial power level need not be supplied.

(b) The submittal for early review of site suitability issue(s) must be made in the same manner and in the same number of copies as provided in §§ 50.4 and 50.30 of this chapter for license applications. The submittal must include sufficient information concerning the range of postulated facility design and operation parameters to enable the NRC staff to perform the requested review of site suitability issues. The submittal must contain suggested conclusions on the issues of site suitability submitted for review and must be accompanied by a statement of the bases or the reasons for those conclusions. The submittal must also list, to the extent possible, any long-range objectives for ultimate development of the site, state whether any site selection process was used in preparing the submittal, describe any site selection process used, and explain what consideration, if any, was given to alternative sites.

(c) The fees associated with the filing and review of the application are set forth in 10 CFR part 170.

§ 52.45 Notice of application.

The NRC staff shall publish a notice of docketing of the submittal in the **Federal Register**, and shall send a copy of the notice of docketing to the Governor of the State, local government bodies (county, municipality, or other political subdivision), and affected, Federally-recognized Indian Tribes. This notice must identify the location of the site, briefly describe the site suitability issue(s) under review, and invite comments from Federal, State, Tribal, and local agencies and interested persons within 120 days of publication or such other time as may be specified, for consideration by the staff in connection with the initiation or outcome of the review and, if appropriate, by the ACRS in connection with the outcome of their review. The person requesting the review shall serve a copy of the submittal on the Governor or other appropriate official of the State in which the site is located, and on the chief executive of the municipality in