

(d) Technical judgments are required to assess whether bounding assumptions or calculations are appropriately conservative.

NRC staff will apply this guidance in evaluating an application for the construction of a high-level waste repository at Yucca Mountain.

The Yucca Mountain Review Plan text has been modified to specifically state the cited items from NUREG-1563.

#### 8.4 U.S. Department of Energy Organizational Structure

*Issue:* Should the Yucca Mountain Review Plan discussion of DOE responsibilities for project management be expanded?

*Comment.* One commenter noted that the license application should contain an evaluation of DOE's procedures for assuring that delegated activities are carried out in accordance with the license and with the Commission's regulations. The commenter noted that DOE would be responsible for safe repository operations, even if certain activities are delegated to a contractor. The commenter stated it is unclear regarding the procedures that DOE must use to manage the overall project, including the delegated activities.

*Response.* Draft Yucca Mountain Review Plan Section 4.5.3.1, "DOE Organizational Structure as it Pertains to Construction and Operation of Geologic Repository Operations Area," provides guidance to NRC staff to determine whether DOE's procedures governing its project management responsibilities are adequate.

No changes were made to the Yucca Mountain Review Plan in response to this comment.

#### 8.5 Water Rights

*Issue:* Does the Yucca Mountain Review Plan adequately evaluate whether DOE has obtained the necessary water rights for operation of a high-level waste repository at Yucca Mountain?

*Comment.* One commenter questioned whether DOE would need to have obtained water rights to accomplish the purposes of the geologic repository operations area. The commenter noted that the phrase "water rights" has specific meaning in Nevada and suggests that the Yucca Mountain Review Plan clarify whether DOE is required to have water rights as granted by the State of Nevada or to simply demonstrate that an adequate supply of water is available for the site.

*Response.* The provisions in Section 4.5.8 of the draft Yucca Mountain Review Plan are based on the requirements regarding water rights specified in 10 CFR 63.121. DOE must

obtain "such water rights as may be needed to accomplish the purpose of the geologic repository operations area." In addition, for permanent closure, DOE " \* \* shall exercise any jurisdiction and control over surface and subsurface estates necessary to prevent adverse human actions that could significantly reduce the geologic repository's ability to achieve isolation. The rights of DOE may take the form of appropriate possessory interests, servitudes, or withdrawals from location or patent under the general mining laws."

No changes were made to the Yucca Mountain Review Plan as a result of this comment.

#### 8.6 License Conditions

*Issue:* Should the list of proposed license conditions for a high-level waste repository at Yucca Mountain include mitigating actions from the environmental impact statement?

*Comment.* One commenter expressed concern that the list of areas for which NRC believes DOE should propose license conditions is unnecessarily limited and is not consistent with conditions contained in licenses for other nuclear facilities. The commenter cites, for example, the absence of a provision for adequate off-site emergency response and medical capabilities. The commenter suggested that the revised plan provide a much more comprehensive listing, for consideration of possible license conditions, which would include all measures to mitigate repository system impacts identified within the Yucca Mountain Final Environmental Impact Statement and impact reports prepared by others.

*Response.* Mitigating actions that might be required as a result of potential environmental impacts of a repository at Yucca Mountain must be addressed by DOE in the Yucca Mountain Final Environmental Impact Statement. The content of the Yucca Mountain Final Environmental Impact Statement is outside the scope of the safety review encompassed by the Yucca Mountain Review Plan. NRC staff will evaluate the Yucca Mountain Final Environmental Impact Statement in accordance with Commission regulations at 10 CFR part 51 and applicable regulations. If appropriate, mitigating actions may be identified as license conditions.

The list of areas for potential license conditions presented in the Yucca Mountain Review Plan guidance is not all-inclusive. Under 10 CFR 63.42, the Commission will impose any conditions, including license specifications, it considers necessary to protect public health and safety, the

common defense and security and the environment. NRC staff has modified the section in the Yucca Mountain Review Plan to make reviewers aware that the listing is not intended to be complete. License conditions will be imposed on a high-level waste repository at Yucca Mountain determined based on a review of information presented in the license application, as well as the environmental impact statement, as needed to reach the reasonable assurance or reasonable expectation standard for the repository.

#### 8.7 Quality Assurance

*Issue 1:* Are Yucca Mountain Review Plan quality assurance acceptance criteria consistent with 10 CFR part 63 requirements and relevant regulatory guidance?

*Comment 1.* A commenter stated that the draft Yucca Mountain Review Plan applies quality assurance acceptance criteria that seem to exceed or expand on 10 CFR part 63 requirements and relevant regulatory guidance, such as NRC-endorsed consensus standards, American Society of Mechanical Engineers Standard NQA-1, other nuclear facility review plans, and standard industry practice as implemented under 10 CFR parts 21, 50, 70, and 72. The commenter stated that the draft Yucca Mountain Review Plan, therefore, unnecessarily constrains the license applicant's ability to establish quality assurance program implementation methods by setting expectations for specific compliance or implementation methods that are rigid and differ significantly from those applicable to other nuclear facilities regulated by NRC.

Another commenter stated that the draft Yucca Mountain Review Plan quality assurance acceptance criteria are too restrictive, are inconsistent with other NRC criteria for quality assurance program descriptions, and would require continual application of the quality assurance program description change process.

The commenters specified a number of places in the Yucca Mountain Review Plan related to their concerns.

*Response 1.* The Yucca Mountain Review Plan quality assurance acceptance criteria are consistent with 10 CFR part 63, subpart G, requirements and relevant regulatory guidance. In preparing the Yucca Mountain Review Plan, NRC staff considered many sources of information including consensus standards, American Society of Mechanical Engineers Standard NQA-1, other nuclear facility standard review plans, and standard industry