

Natural Resources Defense Council, Inc.

917 15TH STREET, N.W.
WASHINGTON, D.C. 20005
202 737-5000

Western Office
664 HAMILTON AVENUE
PALO ALTO, CALIF. 94301
415 327-1080

New York Office
15 WEST 44TH STREET
NEW YORK, N.Y. 10036
212 869-0150

COMMENTS OF THE
NATURAL RESOURCES DEFENSE COUNCIL
ON THE PROPOSED
NUCLEAR REGULATORY REFORM ACT OF 1977

Submitted by:
Edward L. Strohbehn, Jr.
Thomas B. Cochran

Dated: September 6, 1977

COMMENTS OF THE
NATURAL RESOURCES DEFENSE COUNCIL
ON THE PROPOSED
NUCLEAR REGULATORY REFORM ACT OF 1977

I.
INTRODUCTION

The proposed Nuclear Regulatory Reform Act of 1977 (NRRRA) would amend the Atomic Energy Act of 1954 to provide, inter alia, (i) for early approvals without hearings of sites for nuclear power reactors, (ii) for state performance of environmental reviews that are consistent with requirements of the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321 et seq., (iii) for combined construction permit/operating license proceedings, and (iv) for funding of intervenors in Nuclear Regulatory Commission (NRC) regulatory proceedings. The basic goal of the draft NRRRA is to expedite licensing of nuclear power reactors. The two principal results of the NRRRA proposal are: (i) to eliminate or diminish basic safeguards that exist under current law for protecting public health, safety, and the environment, and (ii) not to expedite by any known amount -- and maybe not at all -- the nuclear power reactor licensing process.

The NRRRA proposed amendments raise a number of broad policy issues which we address in the first section below. In the second section we provide detailed comments on specific provisions of the proposed NRRRA.

The NRRA proposal is fundamentally deficient and is inconsistent with a number of key Carter Administration policies regarding energy resource utilization priorities and public participation in agency decision making. We urge that the Administration conduct the nuclear power reactor licensing study which in the National Energy Plan the President "directed" be made and that the results of this study be used in drafting an entirely new NRRA.

II. MAJOR POLICY ISSUES

The proposed NRRA is inconsistent with basic goals and commitments of the Carter Administration:

(a) The draft NRRA narrowly focuses on establishing approved sites for nuclear power reactor electric generating facilities rather than on establishing comprehensive energy facility siting procedures. As a result the bill encourages the use of nuclear power rather than permitting the use of nuclear power only as a "last resort" as President Carter pledged during the campaign;

(b) the draft NRRA seeks to resolve a number of nuclear power reactor licensing issues by statutory means when these issues could probably be resolved more effectively by administrative rulemaking proceedings;

(c) the draft NRRA fails to provide any criteria upon which siting decisions are to be based; this grants decision-making authorities with almost unlimited discretion and precludes effective oversight by the public and the Congress.

(d) the draft NRRA authorizes intervenor funding for NRC regulatory proceedings but fails to provide any funding for public participation in the extremely important state proceedings authorized by the draft NRRA;

(e) the draft NRRA was developed without benefit of the study required by the President in the National Energy Plan and the draft NRRA fails to address important public health and safety regulatory reform issues which were advocated by President Carter during the campaign; and

(f) the draft NRRA establishes revised nuclear reactor licensing procedures which apply to all types of nuclear power reactors, including new, untested types, and which in many respects reduce public health and safety protection safeguards provided by existing law; these reductions in health and safety protection should not be permitted and, in particular, should not apply to new reactor types.

A. The Narrow Focus On Early Site Approvals For Nuclear Power Reactors

The draft NRRA establishes procedures which enable state and federal authorities to approve nuclear power reactor sites 10 years or more before construction permit applications are filed. No limit is placed on the number of nuclear power reactors that may be located at any one site. The early approval of nuclear power reactor sites can be made pursuant to informal rulemaking procedures, such as a public notice and comment process. Then, construction permits and/or operating licenses for nuclear power reactors

to be located on such early approved sites can be issued without hearings. No comparable early site approval process exists for alternative energy sources including solar, coal, and oil.

The results of this nuclear power reactor early site approval process are:

1. to encourage utilities to use nuclear power reactor central generating facilities;
2. to encourage development of nuclear power reactor parks containing several nuclear power reactors; and
3. to encourage state and local land-use energy planning decisions that favor central-power stations.

Expedited licensing procedures and development of planning data for one energy technology without comparable procedures and planning data for alternative technologies prejudices the development and/or use of alternative technologies. Thus, the draft NRRRA will encourage use of and reliance on central power station nuclear power reactors. This result is totally inconsistent with the Carter Administration energy planning policy and campaign commitment to rely on nuclear power only as a "last resort." This result is also inconsistent with Administration energy goals of increasing reliance on renewable energy resources, on energy conservation, and on coal.

The existence of early site approval and expedited licensing procedures for nuclear power reactor sites without any limit on the number of reactors that may be placed at a site establishes a strong bias towards establishing nuclear power reactor parks designed to accommodate large numbers of reactors. The Congressionally mandated study of nuclear energy centers by the Nuclear Regulatory Commission (NRC) concluded:

"it can be feasible and practical, depending on location, to construct up to about 20 nuclear power reactors on a single site. However, [the study] does not indicate any great or unequivocal advantage or compelling need for such centers."
(emphasis added)

Finally, the draft NRRRA early site approval procedures for nuclear power reactors, revised nuclear power reactor licensing procedures, and provision for state assumption of major responsibilities for accomplishing these goals establishes a strong land-use planning bias favoring nuclear power reactors. This bias will significantly affect state land-use planning by reducing substantially serious consideration of increased reliance on renewable and/or decentralized energy sources.

In sum, the draft NRRRA promotes national reliance on central power station nuclear power reactor facilities.

B. The Reliance On Statutory Rather Than Regulatory Reform

The draft NRRRA substitutes an entirely new statutory regulatory regime for early site approvals despite the fact that on May 5, 1977, after a lengthy rulemaking proceeding, the NRC promulgated early site review regulations which probably accomplish most of the major goals of the draft NRRRA.

See 42 Fed. Reg. 22882 (1977). Experience suggests that years of developing regulations and engaging in litigation will occur before the procedures established by the draft NRRRA will provide reliable guidance for utility, public agency, and citizen planning and decisionmaking. A similar level of certainty is likely to occur substantially sooner under the existing statutory scheme and the NRC early site approval regulations. In sum, expediting nuclear power reactor licensing is more likely to be achieved by means of regulatory, not statutory, reform.

A more detailed discussion of the NRC early site review regulations and their relationships to the draft NRRRA has been prepared by Mark Messing of the Environmental Policy Center; a copy is attached.

C. The Lack Of Any Siting Criteria

Even though a central purpose of the draft NRRRA is to achieve early site approvals for nuclear power reactors, the draft NRRRA provides no criteria for these decisions. Moreover, because sites may be approved and nuclear power reactor facilities may be licensed to operate on approved sites without any hearings, essentially total and unreviewable discretion to license nuclear power reactors has been vested in state and federal authorities. Despite the significant public health, safety, and environmental risks involved in the operation of nuclear power reactors, the draft NRRRA precludes effective public participation in and review of these important decisions that permit development and operation of nuclear power reactors. Due to the

lack of any criteria for site approval, even Congress will not be able effectively to oversee implementation of the draft NRRRA.

D. Failure To Provide Intervenor Funding For State Proceedings Under The Draft NRRRA

Because the draft NRRRA authorizes states to make many of the key decisions under the draft NRRRA, in particular all NEPA and related environmental decisions, public participation in state proceedings authorized by the draft NRRRA is of critical importance. However, the intervenor funding provision provides no funds for public participation in these state proceedings. This is a fundamental defect in the bill.

E. Inconsistencies With National Energy Plan And Carter Campaign Commitments

The draft NRRRA is in several essential respects inconsistent with basic commitments made by the National Energy Plan and by President Carter during the presidential election campaign. The most glaring deficiency has been discussed above: the draft NRRRA will encourage increased use of nuclear power rather than relying on nuclear power only as a "last resort." Among the other major inconsistencies in the draft NRRRA as compared with prior Administration commitments regarding the licensing and use of nuclear power are:

1. The failure to study the licensing process prior to developing reform legislation (National Energy Plan, p. 72);
2. The failure to prevent nuclear power reactors from being located in valuable natural areas and potentially

gram is developed to manage and store radioactive wastes."] In so doing, however, I pledge that the states will be active partners in facility siting decisions, and I respect the right of a state to go beyond federal safety requirements if the people of the state feel this is still necessary." (emphasis added)

The draft NRRRA does not provide states with authority to go beyond federal safety requirements.

4. The Failure To Provide For Full Public Participation In The Nuclear Power Reactor Licensing Process

The National Energy Plan stated:

"Reform of the nuclear licensing process is clearly needed. The present process is unsatisfactory to all participants: industry, intervenors, and the Federal Government." (at p. 72)

With the exception of providing funding for intervenors in NRC regulatory proceedings, the draft NRRRA does not respond to intervenor concerns. Moreover, in many respects the draft NRRRA eliminates protective measures that are afforded the public under existing law and NRC regulations. Thus, the draft NRRRA makes effective participation less likely and more onerous than under existing law and regulation.

Examples of these retrograde measures are: (i) the Section 185(a) standard that an operating license may be issued "in the absence of any good cause being shown" why it should not be issued; (ii) the Section 185(c) standard that limited construction activities can take place without a hearing if "on the basis of available

information . . . there is reasonable assurance" that the site is suitable; (iii) the Sections 189(a)(2) and 189(a)(3) requirement that hearings on, inter alia, applications subject to Section 189(a) and on the commencement of operation of a facility "shall be limited to factual issues" which were not resolved in prior proceedings.

In addition, as noted above, the draft NRRRA authorizes funding for intervenors in NRC regulatory processes but does not authorize any funding for intervenors in state proceedings that are authorized by the draft NRRRA. These state proceedings involve extremely important issues, particularly land-use and environmental protection questions, which should be resolved only with full participation by citizens. Adequate participation is unlikely to occur absent intervenor funding.

5. Failure to Address Unresolved Public Health and Safety Issues

The draft NRRRA fails totally to address critically important unresolved public health and safety and NRC decisionmaking process issues. These issues include: (a) the approximately 30 unresolved reactor safety issues identified by the Advisory Committee on Reactor Safeguards (ACRS); (b) a number of unresolved generic fuel cycle issues; (c) the lack of adequate

public health, safety, and the environment. We believe that the Administration was correct in directing that a thorough study of the licensing process be made before undertaking substantial legislative reform of the licensing process.

2. The Failure To Provide Siting Criteria

The National Energy Plan stated:

"The President is requesting that the [NRC] develop firm siting criteria with clear guidelines to prevent siting of future nuclear plants in densely populated locations, in valuable natural areas, or in potentially hazardous locations. Proper siting will substantially reduce the risks of a nuclear accident and the consequences should one occur." (at p. 72) (emphasis added)

Not only does the draft NRRRA not provide any "firm siting criteria with clear guidelines," but the draft NRRRA requires only that "provisions [be established] to assure siting of nuclear reactors away from population centers." Nothing is provided in the draft NRRRA to prevent siting of nuclear power reactors in valuable natural areas and potentially hazardous locations.

3. The Failure To Permit States To Establish Stricter Standards

On October 15, 1976, in reference to the Oregon Ballot Measure No. 9, Governor Carter stated:

"As President, I would act promptly to correct these deficiencies [the lack of adequate safeguards under existing law and/or regulations "to ensure that atomic plants are safely operated and that a pro-

- hazardous locations (National Energy Plan, p. 72);
3. The failure to permit states to prescribe stricter safety requirements than are established by federal law (Candidate Carter Commitment, October 15, 1976);
 4. The failure to facilitate and to ensure full and open participation in nuclear power reactor licensing proceedings (National Energy Plan, p. 72); and
 5. The failure to address unresolved public health and safety issues and provide for their resolution.

1. The Failure To Conduct A Study

The National Energy Plan states: "The President has directed that a study be made of the entire licensing process." (at p. 72). A central purpose of this study should be to develop the information necessary for revising the nuclear power reactor licensing process in order to eliminate bottlenecks and delays without sacrificing safeguards for protecting public health and safety and the environment. The draft NRRRA reflects an Administration decision to abandon the study only five months after the President directed that the study be made. No reasons have been provided why the study is not needed.

In fact, a study is needed to determine, inter alia, whether the licensing process is too long in light of the issues involved and the values to be protected and what actions can be taken to expedite nuclear power reactor licensing while protecting fully

safeguards, as demonstrated, for example, by the federal government's inability to account for thousands of pounds of plutonium, and (d) the veil of secrecy that has shrouded NRC Staff criticisms of nuclear power reactor licensing decisions. The information that has been developed on these matters over the past few years demonstrates that serious problems exist that should be addressed now -- not later.

F. Application of Revised Procedures To All Nuclear Power Reactors

Even if it were deemed in the public interest to adopt the revised nuclear power reactor licensing procedures of the draft NRRRA that significantly reduce the public health and safety protection safeguards of existing law, these revised procedures should apply only to light water reactors (LWRs) for which there exist years of licensing experience. New nuclear power reactor facilities should be required to meet the health and safety requirements of existing law which are stricter than the draft NRRRA requirements. Otherwise public health and safety may be placed in serious jeopardy.

G. Conclusion

In conclusion, the draft NRRRA resolves the six major policy issues identified above in ways which are contrary to the public interest and contrary to basic

commitments of the Carter Administration. A completely new bill should be developed which addresses these issues as well as others that would be identified by the study that should be undertaken before the bill is drafted.

III.
COMMENTS ON SPECIFIC PROVISIONS

A. Section 2 -- Findings And Purposes

A basic deficiency of the findings and purposes is that they probably would be interpreted as representing a determination that increased use of nuclear power should be promoted or pursued by the federal government. This bias towards nuclear power development should be eliminated from the findings and purpose section. In particular, we recommend the following changes:

(i) Section 2(a) should be changed to read in pertinent part (new language is underscored): "an essential element of such a policy must be an effective and efficient licensing process that determines whether a nuclear power reactor should be sited, constructed, or operated and, if so, that the reactor meets reasonable and objective safety and environmental criteria"

(ii) in Section 2(a)(2) the phrase "including nuclear power reactors" should be deleted and the last word "facilities" should be changed to the word "determinations" and

(iii) in Section 2(b)(1), the clause "that will ensure needed electric generating facility siting" should be deleted.

More generally, the findings and purposes do not accurately reflect the operational provisions of the draft NRRRA. For example, Section 2(a)(5) provides:

"it is in the national interest that planning for energy facility siting and need for power determinations be made consistently with national energy priorities."

The Carter Administration policy is to choose nuclear power only as a "last resort," to encourage energy conservation as the cheapest source of power, and to encourage use of renewable energy sources. As demonstrated in the previous section, the draft NRRRA is inconsistent with each of the policies. Moreover, Section 2(a)(5) implies that environmental priorities are not relevant to "planning for energy facility siting and need for power determinations." This is incorrect. The phrase "and environmental" should be inserted before the word "priorities" so that the phrase reads: "consistent with national energy and environmental priorities."

Section 2(a)(7) states that "the national interest requires that nuclear power reactors be sited away from population centers." As stated in the National Energy Plan, reactors should also not be sited "in valuable natural areas or in potentially hazardous locations." (at p. 72)

Sections 2(a)(3) and 2(b)(2) are inconsistent with respect to a fundamental issue -- whether public participation in nuclear power reactor licensing is to be "full." Section 2(a)(3) states that "the national interest requires that full and open public participation be provided" But Section 2(b)(2) fails to state that "full" public participation is a major purpose of the draft NRRRA. This failure is reflected throughout the operational provisions of the draft NRRRA as we demonstrate below. Section 2(b)(2) should be revised to read, in pertinent part: "and insure early, full, and open public participation." This revised purpose should then be implemented by making appropriate revisions in the other sections of the draft NRRRA. See, e.g., pp. 18-20 infra regarding Section 189(a)(3).

Section 2(b)(3) states that a purpose of the draft NRRRA is "to recognize the interests of the States in nuclear power reactor licensing." During the campaign President Carter stated that he "respect[s] the right of a state to go beyond federal safety requirements if the people of the state feel this is still necessary." Statement on Oregon Ballot Measure No. 9, October 15, 1976. The draft NRRRA

prevents states from applying safety requirements stricter than the federal requirements, such as those involving radiological impacts (see, Section 194(c)). We are aware of no state that has determined by referendum or otherwise that it does not wish to establish stricter safety requirements. We are aware of states that have sought to establish stricter requirements; the draft NRRRA does not respect the interests of these states.

B. Section 3 - - Advance Planning and Early Notice

We endorse the concept of "adequate and open advance planning for the addition of . . . generating capacity . . ." (Section 111(a)), although we believe that similar and simultaneous planning is required for encouraging energy conservation. But the draft NRRRA process is established only for the addition of nuclear power reactor generating facilities, and therefore is inconsistent with sound energy planning policies as we have discussed in detail above.

We object to the "significant objection" limitation on public participation in establishing the guidelines and priorities for this planning process (Section 111(a)). This is a generic rulemaking process and should be open to any interested person.

The "three months" period established by Section 111(b) should be changed to "one year" in order to provide adequate time for gathering data and otherwise preparing for participation in the site approval process. The frequency "twice" should be changed to "four times". [N.B. This change should

be made throughout the draft NRRRA; see, e.g., Section 189(a)(2).] Finally, after the words "the affected areas" add the following: "and be served by mail on all persons and agencies which the Commission has reason to believe are interested in the site or the proposed facility."

Section 111(c) should be deleted. The NRC should not be forced to participate in this Department of Energy (DOE) program. The NRC can be encouraged to participate and can avail itself of DOE reports.

C. Section 4 - - Construction Permits and Operating Licenses

This section eliminates or substantially diminishes safety protection requirements of existing law. The number of nuclear power reactor misfunctions and structural failures in recent years provides compelling evidence of the need to maintain strict safety requirements in the licensing and operation of nuclear power reactors.

Section 185(a) authorizes issuance of an operating license "in the absence of any good cause being shown to the Commission why the granting of an operating license would not be in accordance with the provisions of this Act" Since safety matters are in issue, Section 185(a) should maintain reliance on the traditional standard of making a "prima facie showing" why issuance of the license would not be in accordance with the provisions of the Act. The Section 185(a) "good cause" standard is inconsistent with the Section 2(a)(3) finding that "full and open public participation" is in the national interest and with the Section 2(b)(1) and (2) purposes that the proposed NRRRA is "to improve

the effectiveness . . . of the nuclear power reactor licensing process" and "to protect the public interest and insure early and open public participation in the nuclear power reactor licensing process."

Section 185(b) authorizes the NRC to issue a combined construction permit and operating license without making the required definitive safety finding which existing law requires be made at the operating license stage. Section 185(b) should require that this definitive safety finding be made prior to issuance of the combined permit and license. In addition, Section 185(b) establishes no standards for governing the issuance of a combined permit and license. Section 185(b) should state precisely the standards that must be met for issuance of a combined permit and license.

Section 185(c)(ii) authorizes the NRC to permit construction permit applicants to perform limited construction work upon "finding on the basis of the available information and review to date that there is reasonable assurance that the proposed site is a suitable location for a facility of the general size and type proposed . . ." No standards are established which define the extent of construction activities permitted or which define the public health and safety protection requirements that should be met. This subsection should require that construction activities cannot take place prior to issuance of a construction permit until the NRC has made definitive affirmative findings on all relevant health and safety and environmental issues. These findings should be at least as rigorous as those that are presently

required for issuance of limited work authorizations (LWAs).

Section 185(c) also authorizes construction activities that are initiated pursuant to this subsection prior to issuance of a construction permit to continue indefinitely "upon good cause shown." This provision provides a basis for permitting extensive construction to take place without adequate safeguards and potentially provides the applicant a disincentive for seeking prompt processing of the applicant's construction permit. This extension-of-time provision should be eliminated. In the alternative, specific standards should be established for determining when extensions of the one-year Section 185(c) limited construction activity period should be granted.

D. Section 5 - Hearings

The most serious deficiency of this provision is that in Section 189(a)(3) it authorizes the NRC to issue construction permits and/or operating licenses without a hearing for nuclear power reactors that are to be located on approved sites and that are based on standard facility designs. Since approval of sites and of standard facility designs can be made pursuant to informal rulemaking procedures, no adjudicatory hearings are required for Section 189(a)(3) nuclear power reactor construction permit and/or operating license decisions. This result is contrary to the requirements that normally apply to these decisions, severely curtails public participation in the decisionmaking process, and is inconsistent with the national interest in "full and open public participation." Section 2(a)(3) but see Section 2(b)(2)

and comments at p. 14 supra.

However, for a construction permit and/or operating license that could be issued without a hearing pursuant to Section 189(a)(3), Section 189(a)(3) does require that a hearing be held in the limited situation where it can be shown that "special circumstances . . . are such that the application of the rule [by which, e.g., the site was approved] or manufacturing license approval to the particular proceeding will not serve the purposes for which the rule was adopted or license issued." The burden is on the potential intervenor to make this showing. The showing seems almost impossible to make. Thus public participation in the processes for approving early sites and standard facility designs and in the subsequent approval processes for related construction permits and operating licenses are severely limited.

Sections 189(a)(2) and 189(a)(3) limit hearings "to factual issues as to which there was no resolution in a prior proceeding" (emphasis added) An exception to this limitation is provided if "significant new information . . . has been discovered . . . and that as a result thereof it is likely that the site or facility design will not comply with [applicable law]." (emphasis added) These requirements severely limit public participation in the decisionmaking process. The "factual issue" limitation should be broadened to cover any issue, the term "significant" should be deleted, and the term "likely" should be

changed to "possible."

Section 189(a)(2) permits the NRC to dispense with making a public notice of permit or license amendment applications if the Commission determines "that the amendment involves no significant health or safety consideration." This provision is yet another example of limiting public participation in the nuclear power reactor licensing process. The provision should be deleted. The provision also permits the Commission to dispense with giving any public notice of a permit or license amendment application that has "no significant health or safety considerations" but which has significant, or even substantial or severe, environmental considerations. If the provision is not deleted, then the term "significant" should be changed to "substantial" and the term "environmental" should be added to the phrase so that it reads: "that the amendment involves no substantial health, safety, or environmental considerations."

E. Section 6 - Early Site Approval

The fundamental deficiencies of this section have been discussed above. In sum: Section 192 would tend to encourage use of nuclear power reactor generating facilities, to affect substantially state land-use planning systems by incorporating a bias towards relying generally on central station power energy sources and particularly on nuclear power reactors, and to diminish significantly the extent to which alternative energy sources, including energy conservation and renewable energy sources, are seriously considered and used in meeting energy needs. In addition, Section 192

establishes no standards for early site approval decisions. Section 192 contains other deficiencies as well.

No limits are placed on the size of the site or on the number of nuclear power reactors that may be located at a site. An NRC study has found that there is no "great or unequivocal advantage or compelling need for" nuclear power reactor parks containing several reactors. Thus Section 192 may encourage development of nuclear power reactor parks which would provide no power production advantages but which may cause significant environmental effects and may raise significant public health and safety concerns.

The sites may exist as approved sites for ten years and, "[if] good cause [is] shown," for a longer period. Even ten years is far too long for an approved site to be available. Under the draft NRRRA, a standard facility design nuclear plant can be constructed and operated on the site without a hearing. Although the draft NRRRA establishes no standards for early site approvals, presumably the basis for the concept under the draft NRRRA is that early site approvals are made with reference to state-of-the-art nuclear power reactor technology, including standard facility designs. See Section 194(a)(1) which discusses what determinations a state is to make with respect to an application for a site permit: "in the case of a site permit, that the State has determined that construction and operation of a nuclear power reactor and directly associated facilities with specified general site-related design

characteristics" (emphasis added) Given the rapid changes that are likely to occur in nuclear power reactor technologies as well as the rapid advances that will probably occur in our knowledge of how to deal with public health, safety, and environmental protection issues, ten year old approved sites are likely to be based on obsolete technologies and worthless data. Early site approvals should be for no longer than a five year period which is the same period that is permitted under the NRC's early site approval regulations. See 42 Fed. Reg. 22882 (1977) No extensions should be permitted. If a person or state seeks reapproval of the site, the same procedures and standards should apply that would apply to a new site application at the time reapproval is sought.

Section 192(b) authorizes applicants for construction permits or for combined construction permits and operating licenses to perform "limited construction activities," including "safety-related construction activities", that are consistent with NRC rules or regulations without obtaining specific NRC authorization. No standards are established by Section 192(b) for what construction activities may occur. Thus, Section 192(b) permits construction to begin before any determination of need or any safety findings have been made. The fact that these construction activities are at the applicant's risk diminishes only slightly the extent to which this preapplication approval construction activity authorization tends to make approval

of the applicant's permit and operating license a foregone conclusion. Limited construction activities under Section 192 - - just like limited construction activities under Section 185(c) - - should not take place until the NRC has made definitive affirmative findings on all relevant health and safety and environmental issues and made a definitive finding on the need for the nuclear power reactor.* These findings should be at least as rigorous as those that are presently required for issuance of limited work authorizations (LWAs).

F. Section 8 - State Environmental Reviews

There are a number of basic deficiencies in this section which would become Section 194 of the Atomic Energy Act of 1954.

First, state environmental review determinations need not comply with the specific requirements of the National Environmental Policy Act (NEPA). Instead, under Sections 194(a)(2) and 194(d)(1)(B), the state determinations can comply with state law which the NRC and not the Council on Environmental Quality, which only provides advice to the NRC on this issue, finds meets the requirements of NEPA.

* It is interesting that under the draft NRRA when a state has an approved environmental review program pursuant to Section 194, the NRC may not issue a construction permit or a combined construction permit and operating license unless the State notifies the NRC that "the State has determined that there is a need for the nuclear power reactor." Section 194(a)(1)(B).

NEPA has been law for seven years. Extensive agency practice under NEPA and substantial litigation involving NEPA have made NEPA's requirements well understood so that sound planning can proceed with respect to NEPA's requirements. Establishing as the basic environmental decisionmaking framework new, untested state laws that differ from NEPA will probably produce uncertainty, litigation, and delay that could be avoided if NEPA remained the applicable law.

Second, NRC determinations regarding the radiological impacts of nuclear power reactor construction and operation and NRC approvals of operating licenses are exempted entirely from NEPA and/or state environmental laws approved under Section 194 by Sections 194(a)(3), 194(b), and 194(c). Pursuant to Section 194(c), the NRC's radiological impact conclusions are provided to states for incorporation "in the State's determination regarding environmental acceptability" and "[t]he [NRC's] statement of conclusions shall not be subject to revision in any State proceeding." Then, under Section 194(a)(3), a State "environmental acceptability" determination "shall not be subject to further review by the [NRC] under [NEPA]." Finally, Section 194(b) provides that in those cases where States have approved environmental review programs, notification submitted to the NRC by the State that it will make the Section 194 determinations "discharge[s] the [NRC] and all other Federal agencies from any of their responsibilities with regard to siting, construction, and operation of the nuclear power reactor . . . under [NEPA]." (emphasis added) Although the State is required to

consider environmental effects of nuclear power reactor operation in its environmental review, under Section 194 states review only applications for site permits, construction permits, and combined construction permits and operating licenses. Thus, under Section 194, operating license applications would not be subject to state environmental reviews or to a NEPA review by the NRC.

Third, Section 194(c) precludes states from requiring nuclear power reactors to meet state radiological health and safety standards that are stricter than federal standards. This requirement is inconsistent with President Carter's October 15, 1976 statement during the campaign regarding Oregon Ballot Measure No. 9 in which he stated: "I respect the right of a state to go beyond federal safety requirements if the people of the state feel this is necessary."

Fourth, Section 194(d) fails to establish as a mandatory requirement of a state approved Section 194 program that intervenor funding shall be available for intervenor participation in state determinations authorized by Section 194 and that such funding shall be provided on terms and conditions that are no more stringent than those established for NRC regulatory proceedings by Section 195 of the draft NRRA.* The mandatory requirement for intervenor

* As we discuss infra, we consider the Section 195 requirements to be too restrictive. However, we believe that state intervenor funding programs under an NRRA should not be permitted to be any more restrictive than the federal intervenor funding program.

funding could be incorporated in Section 194(d)(5).

Fifth, the "to the maximum extent practicable" proviso of Section 194(d)(2) should be deleted. Section 194(d)(2) requires only "consideration", not selection, of an alternative source of power. "Consideration" is not only practical, but necessary. Moreover, because nuclear power should be selected as an energy source only as a "last resort", Section 194(d)(2) should require States to provide a detailed statement of the facts and reasons which demonstrate why it was appropriate for the state to reject using a non-nuclear energy source and to select a nuclear power reactor for meeting state energy needs. The states should require applicants to submit data which demonstrate that there are no feasible or practical alternatives to the proposed nuclear power reactor. However, due to the applicant's interest in obtaining approval of its nuclear power reactor facility, the state should not be able to rely on the applicant's submissions for making the state's independent "no non-nuclear alternative" decision.

Sixth, Section 194(d)(3) should be revised to require provisions that will "prevent siting of future nuclear power plants . . . in valuable natural areas[] or in potentially hazardous locations" which are siting criteria that in the National Energy Plan (at p. 72) the President requested the NRC to adopt.

Seventh, Section 194(d)(4) should be revised in two respects. The phrase "to the maximum extent possible" should be deleted. The term "relevant" in the phrase "to the maximum extent possible all relevant environmental considerations" appropriately qualifies the term "all" and ensures reasonableness. Under the Section 194(d) program, the state is fully responsible for conducting the environmental review and therefore should fully consider "all relevant environmental considerations." The first sentence of Section 194(d)(4) should be revised to read (added language is underscored): "provisions to assure (a) that the States have adequate resources and expertise to evaluate (i) environmental impacts of nuclear power reactor facilities and reasonable alternatives to such facilities, (ii) whether there is a need for future electric generating capacity, and (iii) whether energy needs can be met by means other than electric generating facilities, and (b) that State decisions reflect these evaluations. Without these revisions, Section 194(d)(4) incorporates into state programs a bias towards favoring nuclear power reactor electric generating facilities for meeting state energy needs.

Eighth, Section 194(d)(10) provides that DOE "shall advise States on power need projections." A similar statement does not appear in Sections 194(d)(2) and 194(d)(4) which involve "need for power" determinations. The Section 194(d)(10) requirement regarding DOE might be interpreted

as requiring DOE to submit data that is relevant only to multistate "need for power" assessments. In addition, the term "advise" might be interpreted as requiring DOE to provide states only with DOE's "need for power" conclusions rather than the underlying data. It should be made clear in Section 194(d)(10), or elsewhere, that for all state determinations that are being made pursuant to Section 194, DOE will provide the state or states involved with all relevant need-for-power data and analyses that DOE has.

Ninth, the Section 194(d) which is located on p. 26 (and which should be Section 194(e)), should be revised so that it clearly incorporates the requirements of Section 194(d) with the changes which we have recommended above.

G. Section 9 - Funding For Intervenors

We endorse the Section 195 Funding For Intervenors concept. However, Section 195 is unduly restrictive. For example, Section 195 does not provide for payment of an intervenor's expert witness fees and Section 195 requires "that the amount of payment shall be based on the intervenor's contribution to the proceeding" How is this "contribution" to be assessed: subjective judgment by NRC Staff; amount of materials filed; number of issues raised; number of members represented by the intervenor organization, etc? Moreover, because it is likely that there will be a greater demand for more intervenor funds than are available, Section 195 should establish criteria for determining allowable expenses and for allocating available funds among all intervenors.

ATTACHMENT TO NRDC COMMENTS
ON
PROPOSED NUCLEAR REGULATORY REFORM ACT OF 1977

Set out below are comments by Marc Messing of the Environmental Policy Center on the Nuclear Regulatory Commission's (NRC) early site review regulations (42 Fed. Reg. 22882, May 5, 1977).

* * * * *

NRC REGULATIONS

Early site review regulations were promulgated by the NRC on May 5, 1977 (42 FR 22882), following the publication of proposed regulations by more than a year, and are generally characterized by a large degree of administrative flexibility within the strict confines of statutory authority.

The regulations allow for preliminary site evaluations in response to applications submitted either by utilities in conjunction with specific construction permit applications, or by any party (including independent parties or the State)* in the absence of any construction permit application. In the latter case the NRC staff will comment on preliminary site characteristics without conducting public hearings, but with the stipulation that copies of the final report be forwarded to appropriate officials of State and local government in which the site is located. In the case in which a utility submits an application for ESR in conjunction with a construction permit, all current requirements for public notice and hearing are retained within an adjusted hearing schedule.

* Although anyone, including parties of interest in siting cases and individual persons, can submit sites for preliminary review, it is the opinion of the NRC staff that the basic requirements of information necessary for docketing a case will prevent abuse of this provision; at the same time it will make available ESR procedures for interested parties such as State siting commissions for the review of alternative sites.

NRC regulations require that applicants for construction permits seeking early site review must submit information on 1) the range of postulated facility designs and operating parameters, 2) a brief description of long-range plans for the ultimate development of the site, and 3) proposed findings on the site suitability issues submitted for review. The scope of the Commission review, and the extent to which any preliminary findings will be considered as part of the permit decision, are then determined at the discretion of the Commission. In particular the Commission may determine "whether an early partial decision would serve as the decision... (depending) on the nature and scope of the decision", and may decide not to hear issues if there is a serious doubt that the resolution of particular issues "will retain their validity in later reviews." In making such determinations the Commission regulations explicitly seek "to avoid prejudicing later NEPA reviews," take cognizance of "possible objections" by State agencies, and provide for "soliciting the view of NEPA commenting agencies" regarding the initiation of an ESR procedure. Furthermore, early site reviews will follow procedures "consistent with the review procedures prescribed in NEPA for environmental impact statements"

Provisions regarding the limitations of ESR's and review procedures stipulate that hearings may begin up to 5 years in advance of full CP applications; but can only be extended upon demonstration of "good cause" for periods of up to one year. After 5 years the Commission must review its findings; within five years it must only review them upon show of good cause. Once decisions have been determined on particular issues, a demonstration of "good cause" is insufficient for review, but there must be a demonstration of "significant new information".

While providing for the preliminary consideration of environmental issues, the regulations require full compliance with NEPA, and prohibit the issuance of any LWA without the completion of a full NEPA review.