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17 May 2001
DCS-NRC-000048

Mr. Michael T. Lesar, Chief
Division of Administrative Services
Office of Administration
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Attention: Document Control Desk

Subject: Docket Number 070-03098
Duke Cogema Stone & Webster
Mixed Oxide (MOX) Fuel Fabrication Facility
Environmental Impact Statement, Notice of Intent
Scoping Comments

Dear Mr. Lesar:

The MOX Fuel Fabrication Facility is part of the Plutonium Disposition Program administered by the Department of Energy (DOE). As part of the administration of the Plutonium Disposition Program, DOE has conducted several evaluations of environmental impacts, developed Environmental Impact Statements, and issued subsequent Records of Decision. DCS believes that NRC should make full use of the environmental documentation already prepared by DOE, as provided by the Council on Environmental Quality regulations and guidelines, and avoid reevaluation of those issues where DOE has already rendered a decision.

Enclosed please find DCS' comments on the scope of the NRC EIS. If you have any questions concerning these comments please contact me at your convenience at (704) 373-7820.

Sincerely,

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Enclosure: DCS Comments on the Scope of the MFFF Environmental Impact Statement

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DCS Comments on the Scope of the MOX Fuel Fabrication Facility Environmental Impact Statement

1. **Statement of Proposed Action.** The Notice of Intent (66 FR 13794, March 7, 2001) states that Alternative 1 is to issue a Construction Authorization for the MOX Fuel Fabrication Facility at SRS and that the No-Action Alternative is not to issue the Construction Authorization. A single EIS will be prepared covering the impacts of both the construction and operation of the MOX Fuel Fabrication Facility. Consequently, the official statement of proposed action and no-action should be broadened to include not only the issuance of a construction authorization but also the issuance of a license to possess and use special nuclear material at the MOX Fuel Fabrication Facility.
2. **Need for the Mixed Oxide Fuel Fabrication Facility.** In the public scoping meetings, some commentors recommended that NRC evaluate the need for the MOX Fuel Fabrication Facility. In addition to the reasons presented in the MOX Fuel Fabrication Facility Environmental Report, the *Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation (2000)*¹ commits the United States to disposal of 28.2 tons (25.57 metric tons) of plutonium through conversion to MOX fuel and irradiation in power reactors. The Department of Energy (DOE) has established that there is a need for the MOX Fuel Fabrication Facility to meet National Security non-proliferation goals. Therefore, the NRC should adopt the decision of the DOE that the need for the MOX Fuel Fabrication Facility has been established.
3. **Alternatives to the MOX Fuel Fabrication Facility.** In the public scoping meetings, some commentors recommended that NRC evaluate alternatives to the MOX Fuel Fabrication Facility other than the No-Action Alternative. The DOE evaluated alternatives to conversion of weapons-usable plutonium to mixed oxide fuel in two previous Environmental Impact Statements, *Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement* and *Surplus Plutonium Disposition Final Environmental Impact Statement*. Together, these comprehensive evaluations considered over 100 alternatives for storage and disposition of surplus plutonium and highly enriched uranium (HEU). Therefore, in the previous EISs, DOE conducted the requisite environmental analyses for the selected plutonium disposition options. The scope of the NRC EIS should be restricted to the Proposed Action, the No-Action Alternative, siting alternatives within the F-Area and a reasonable range of MOX Fuel Fabrication Facility design alternatives.
4. **All Immobilization as the No-Action Alternative.** In the public scoping meetings, some commentors recommended that NRC evaluate all immobilization as the No-Action Alternative. As the NRC stated in the Notice of Intent (66 FR 13794, March 7, 2001), "...NRC is limited to issuing or denying the construction authorization and/or license to

¹ White House, 2000. *Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation (2000)*, September, 2000.

operate the MOX Facility at SRS. The DOE has already decided to pursue the two disposition approaches for surplus weapons plutonium, and has already decided to site the MOX Facility at SRS. These decisions will not be revisited by NRC.” Since the NRC’s responsibility and authority is limited to granting or denying the license application and does not extend to reconsideration of DOE policy determinations, consideration of 100% immobilization as the No-Action Alternative or as any other alternative is inappropriate.

DCS is not aware of any information presented at the scoping meetings that should cause the NRC to establish the precedent of evaluating an alternative that is so clearly: (1) within the decision-making authority of the DOE as the Executive Branch Agency responsible for setting surplus plutonium disposition policy; and (2) beyond the scope of the licensing action under review. Nor are we aware of any other instance in which the NRC has evaluated two “No-Action” alternatives in a single EIS. As denial of the license application is the obvious and appropriate “No-Action” alternative, and as it is not an option with respect to the DCS application, the NRC should refrain from considering an “all-immobilization” option in the EIS.

5. **Treatment and disposition of MFFF wastes by the Savannah River Site.** DCS plans to transfer MFFF liquid and solid wastes produced to the DOE SRS waste management infrastructure, for treatment and ultimate disposition. In the public scoping meetings, some commentors recommended that NRC evaluate the environmental impacts of storage, treatment and disposal of MFFF waste by the DOE using the SRS waste management infrastructure. DCS is unaware of any environmental evaluation for a previous Part 50 or Part 70 license that included a detailed evaluation of the impacts of disposal of the Part 50 or Part 70 licensee waste at an approved radioactive waste disposal facility. Consequently, consistent with past practice, the scope of the EIS for the MFFF should limit the evaluation of waste management to a determination of whether or not SRS has sufficient capacity to manage the waste.
6. **Evaluation of Environmental Justice Impacts.** In the public scoping meetings, commentors recommended that NRC evaluate environmental justice impacts. In response to DCS request for clarification, NRC (letter from Ms M. A. Galloway to Mr. P. S. Hastings, May 3, 2000) indicated that, “Formal review of DCS’s Environmental Report (ER) will be based on ... NMSS Policy and Procedures Letter 1-50 Rev 2, ‘Environmental Justice in NEPA Documents.’” Use of the Policy and Procedures letter was reiterated by NRC in a follow-up clarification dated December 11, 2000. DCS encourages NRC to prepare its EIS Environmental Justice evaluation by applying the guidance of the NMSS Policy and Procedures Letter. The fact that the MOX Fuel Fabrication Facility is to be sited in the Savannah River Site does not warrant any departure from the relevant NRC guidance, which the NRC staff has indicated it would apply. On the contrary, the Policy and Procedure Letter recommends that a 4 mile radius be used for evaluating Environmental Justice considerations when a facility is to be sited in a rural area. Since the facility is located well within the boundaries of the DOE-controlled Savannah River Site, its location creates a unique additional buffer from any potential adverse impacts on local minority or low income populations. Consequently, evaluations of Environmental Justice beyond the distance recommended in NMSS Policy and Procedures Letter are not warranted.

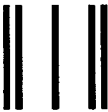
7. **Impacts of using mixed oxide fuel in commercial reactors.** In the public scoping meetings, some commentors recommended that NRC evaluate the use of MOX fuel in the mission reactors and questioned the “generic” evaluation of reactor impacts by DOE. Contrary to the comments made at the scoping meeting, the impact evaluation in the *Surplus Plutonium Disposition Final Environmental Impact Statement* specifically evaluated the use of MOX fuel in the McGuire Nuclear Station and Catawba Nuclear Station reactors. These are the same reactors that DCS proposes to use as mission reactors. NRC should adopt the evaluation and conclusions performed by the DOE and contained in the *Surplus Plutonium Disposition Final Environmental Impact Statement*. Including extensive evaluation of impacts at these reactors in the NRC EIS will unnecessarily duplicate the environmental evaluation that DOE has already performed. Any additional evaluations that may be required by NRC regarding the impacts of the mission reactors irradiating MOX fuel can be made more appropriately at the time that the reactor licensee submits license amendment applications.
8. **MOX Fuel Fabrication Facility Decommissioning.** NRC has requested comments on how to evaluate decommissioning of the MOX Fuel Fabrication Facility. The DOE, in its Comprehensive Asset Management Program, often reuses facilities for other DOE missions after the facility’s original mission is completed. Consequently full decommissioning of a facility occurs at the end of facility life, rather than at the end of the original mission. The DOE in the *Surplus Plutonium Disposition Final Environmental Impact Statement* indicated that the surplus plutonium disposition facilities would be deactivated and stabilized after mission completion. Deactivation would include removal of radioactive and non-radioactive feedstock and other chemicals, removal of process wastes and removal of useful equipment. The DCS Environmental Report (Section 5.3) discussed deactivation in greater detail. In the Environmental Report, DCS noted that deactivation was similar to restricted release of property under 10 CFR § 70.38. The discussion on environmental impacts of deactivation presented in the Environmental Report meets the intent of evaluating the “...[P]lans and policies regarding deactivation, decommissioning, and dismantling at the end of the plant's useful life” recommended under NUREG-1718 (F2)2.d.1. Because DOE has not yet decided whether the MOX Fuel Fabrication Facility will be reused or decommissioned, consideration of decommissioning impacts is too remote and speculative at this time. Further, the DCS Construction Authorization Request states (Section 1.2.4.1) that “DCS intends to include with the license application for possession and use of SNM a request for a license condition that the facility will be turned over to DOE at the conclusion of the contract and prior to commencement of decommissioning.” That is, decommissioning should not be within the scope of the NRC's EIS, as it is DOE's responsibility.
9. **Alternatives to the Pit Disassembly and Conversion Facility.** In the public scoping meetings, commentors alleged that DOE may be considering an alternative to construction of the Pit Disassembly and Conversion Facility. The commentors recommended that NRC evaluate the impacts of this possibility. DOE alternatives concerning the Pit Disassembly and Conversion Facility (and the Plutonium Immobilization Facility) are unrelated to NRC actions concerning the license to possess special nuclear material at the MOX Fuel Fabrication Facility. Alternatives related to the Pit Disassembly and Conversion Facility are under the jurisdiction of DOE under the provisions of 10 CFR Part 1021 and are adequately

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addressed in the *Surplus Plutonium Disposition Final Environmental Impact Statement* ROD. NRC is limited to evaluating the cumulative impacts of this related action as DOE has proposed it.

10. **Conversion of Russian plutonium to MOX fuel.** In the public scoping meetings, a commentor recommended that NRC evaluate the environmental impact on the Russian environment of converting excess Russian plutonium to MOX fuel in Russia. This commentor considered the action to be connected to the NRC action because the *Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation* stipulates a quantity of weapons-grade plutonium that each country will convert to MOX fuel. It is well established that environmental impacts occurring outside the U.S. and within the borders of a sovereign nation are outside the scope of NEPA. As a result, there is no basis for the NRC to assess the environmental impacts of the Russian MOX program.

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