

STATE ATTORNEYS GENERAL

Rulemaking Comments From the Chief Legal Officers of the Following States:

Connecticut · Illinois · Kentucky · Louisiana · New Jersey · New York · Vermont

March 16, 2007

DOCKETED  
USNRC

NRC Commissioners  
c/o Annette Vietti-Cook, Secretary  
U.S. Nuclear Regulatory Commission  
11555 Rockville Pike  
Rockville, MD 20852

March 19, 2007 (445pm)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

SUBJECT: *Comments on Massachusetts Attorney General's Petition for  
Rulemaking, PRM-51-10, 71 Fed. Reg. 64,169 (November 1, 2006)*

Dear Commissioners:

We, the undersigned Attorneys General, urge the U.S. Nuclear Regulatory Commission (NRC) to rescind its regulations that currently prohibit consideration, in NRC licensing proceedings, of the significant public health and environmental risks of severe accidents posed by high-density pool storage of spent fuel at nuclear power plant sites.<sup>1</sup> As you know, every nuclear power plant in the United States hosts a high-density fuel storage pool, and the inventory of spent fuel continues to mount without any clear prospect for removal and permanent disposal. Recent reports by the National Academy of Sciences, the NRC's own technical staff and independent experts contradict the NRC's assertion that high-density fuel storage pools pose no significant environmental risk.<sup>2</sup> Instead, these studies show that fuel storage pools are susceptible to fire and radiological release from a wide range of conditions, including natural phenomena, operator error, equipment failure, or intentional attack.<sup>3</sup> The environmental impacts of a fire in a spent fuel pool may be severe, extending over a geographic area larger than a state's legal boundaries and continuing for decades.<sup>4</sup> In the aftermath of the September 11 attacks and other new and significant information, the NRC's outdated conclusion -- that fuel pool storage risks are insignificant -- is no longer defensible.

We are also concerned that the NRC, while disregarding this new and significant information, continues to consider applications for renewing the operating licenses of many nuclear power plants and for early site permits for several new reactors on existing nuclear plant sites. Consistent with *Marsh v. Oregon Natural Resources Council*, 490 U.S. 374 (1989), the NRC should revisit its previous conclusion that the environmental risks of storing spent fuel in high-density storage pools are negligible. Moreover, the NRC should implement the Ninth Circuit U.S. Court of Appeals' decision in *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9<sup>th</sup> Cir. 2006), *cert denied*, 127 S. Ct.

1124 (2007), which held that the NRC must address the environmental impacts of terrorist attacks in environmental assessments or Environmental Impact Statements (EIS) in its licensing decisions.

Therefore, we support the Massachusetts Attorney General's Petition for Rulemaking to Amend 10 C.F.R. Part 51 (August 25, 2006). Consistent with the Attorney General's Petition and the requirements of the National Environmental Policy Act (NEPA) [42 U.S.C. § 4231 et seq.], we urge you to:

- make a new determination that high-density pool storage of spent fuel poses significant environmental risks;
- revoke the regulations that preclude consideration of the environmental impacts of high-density pool storage in NRC licensing decisions (including license issuance, extension and amendments); and
- address, in licensing decisions involving spent fuel storage:
  - (a) the vulnerability of fuel to severe accidents from a range of causes including equipment malfunctions, natural disasters such as earthquakes, human error, and intentional attacks; and
  - (b) the relative costs and benefits of a reasonable range of alternatives for avoiding or mitigating the environmental impacts of a severe spent fuel pool accident.

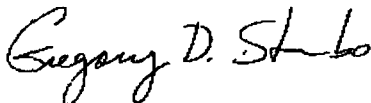
Sincerely,



Richard Blumenthal  
Attorney General Connecticut



Lisa Madigan  
Attorney General Illinois



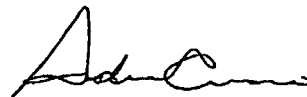
Greg Stumbo  
Attorney General Kentucky




Charles Foti  
Attorney General Louisiana



Stuart Rabner  
Attorney General New Jersey



Andrew Cuomo  
Attorney General New York



William H. Sorrell  
Attorney General Vermont

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<sup>1</sup> See 10 C.F.R. §§ 51.23(a) and (b), 51.30(b), 51.53(c)(2), 51.61, 51.80(b), Table B-1 of Appendix A to 10 C.F.R. Part 51; LBP-06-23, Memorandum and Order (Ruling on Standing and Contentions of Petitioners Massachusetts Attorney General and Pilgrim Watch) (October 16, 2006); LBP-06-20, Memorandum and Order (Ruling on Standing, Contentions, Hearing Procedures, State Statutory Claim, and Contention Adoption) (September 22, 2006).

<sup>2</sup> See, e.g., NUREG-1738, Final Technical Study of Spent Fuel Pool Accident Risk and Decommissioning Nuclear Power Plants (NRC: January 2001); National Academy of Sciences Committee on the Safety and Security of Commercial Spent Nuclear Fuel Storage, Safety and Security of Commercial Spent Nuclear Fuel Storage (The National Academies Press: 2006); Gordon Thompson, Risks and Risk-Reducing Options Associated with Pool Storage of Spent Nuclear Fuel at the Pilgrim and Vermont Yankee Nuclear Power Plants (May 25, 2006). These reports or relevant excerpts are attached to the Attorney General's Rulemaking Petition.

<sup>3</sup> Id.

<sup>4</sup> Jan Beyea, Report to the Massachusetts Attorney General on the Potential Consequences of a Spent-fuel Pool Fire at the Pilgrim or Vermont Yankee Nuclear Plant (May 25, 2006). Dr. Beyea's Report is attached to the Attorney General's Rulemaking Petition.

**From:** "Cotter, Paula" <PCotter@NAAG.ORG>  
**To:** <SECY@nrc.gov>  
**Date:** Fri, Mar 16, 2007 1:34 PM  
**Subject:** Comments to be filed on behalf of Attorneys General of Connecticut, Illinois, Kentucky, Louisiana, New Jersey, New York, and Vermont; PRM-51-10

Dear Secretary Vietti-Cook:

I am forwarding a letter from the Attorneys General of Connecticut, Illinois, Kentucky, Louisiana, New Jersey, New York, and Vermont, Docket number PRM-51-10.

Please contact me if there are any problems with opening it, reading it, or similar technical issues.

<<Letter to NRC.pdf>>

Paula Cotter  
National Association of Attorneys General  
2030 M Street NW, 8th Floor  
Washington, DC 20036  
202-326-6250 T  
202-331-1427 F

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