

WCO outreachCEm Resource

From: Michael Callahan [mike_callahan@govstrat.com]
Sent: Thursday, February 16, 2012 9:55 AM
To: WCO outreach Resource
Subject: Re: Comments from the Decommissioning Plant Coalition
Attachments: finalWC comments.docx

This is a continuing problem; as I work on the work-around with the NRC staff (and there is one), please accept the docx version; the signature copy is in the mail.

Please let me know that you have or have not received.

Thanks,

MSC

On Feb 16, 2012, at 9:43 AM, WCO outreach Resource wrote:

Mr. Callahan,

The pdf file did not come through. Can you try sending it again?

From: Michael Callahan [mailto:mike_callahan@govstrat.com]
Sent: Thursday, February 16, 2012 9:10 AM
To: WCO outreach Resource
Subject: Comments from the Decommissioning Plant Coalition

Attached find the comments of the Decommissioning Plant Coalition (DPC) on the NRC's draft "Background and Preliminary Assumptions for an Environmental Impact Statement—Long-Term Waste Confidence Update".

As there have been some problems in the past months in the staff's receipt of some pdf attachments from the DPC, please let me know if you receive or do not receive the attached comments.

Sincerely,

Mike Callahan
on behalf of the DPC
301-526-7606 (c)

Federal Register Notice: 99FR99992
Comment Number: 39

Mail Envelope Properties (92BBE02B-FFD7-46C3-9A65-2639781C0163)

Subject: Re: Comments from the Decommissioning Plant Coalition
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February 16, 2012

Ms. Christine Pineda, Project Manager
Mailstop EBB-2B2
Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Ms. Pineda;

The Decommissioning Plant Coalition (DPC)¹ appreciates the opportunity to provide comments on the "Draft Report for Comment -- Background and Preliminary Assumptions for an Environmental Impact Statement -- Long-Term Waste Confidence Update" (hereinafter "Draft Report"). Ours are divided into two sections: this cover letter, which provides our general comments about the policy implications and timeliness of the agency's effort, and an appendix that provides our detailed comments on specific sections of the Draft Report.

First, we commend the NRC staff for its hard work on this effort and appreciate the fact that the Commission initially tasked it to develop a long-term update of its most recent Waste Confidence decision, addressing the impacts of storage beyond a 120-year timeframe. We also would emphasize our commitment that the material that remains stored on our sites is and will be safe and secure.

Nonetheless, the DPC believes the effort to finalize the Draft Report and move into a more formal process on the timeframes set forth therein is premature and the work on it should pause.

¹ The Decommissioning Plant Coalition was established in 2001 to highlight issues unique to nuclear power plants undergoing decommissioning. The DPC is focused on addressing the needs of single-unit sites that are undergoing or have completed decommissioning activities. Members of the Decommissioning Plant Coalition include the Big Rock, Connecticut Yankee, LaCrosse, Maine Yankee, Rancho Seco, and Yankee Rowe facilities.

We certainly would agree with the Commission that spent fuel is being stored longer than originally intended because of (we believe the statutory and contractual breaches and the resulting) uncertainties in the national strategy for disposing of that material. Indeed, it is our view that the Commission has already recognized this fact and accounted for it in its last Waste Confidence decision. And, while we further agree with the brief discussion by staff of the “National Context” provided in section 2 of the Draft Report, what we feel is missing from the discussion is adequate recognition and emphasis that one of the fundamental principles behind Waste Confidence – and the nation’s civilian spent fuel management effort - is that the federal government, currently acting through the Department of Energy (DOE), is responsible for the development of all necessary infrastructure for long-term spent fuel and Greater-Than-Class-C (GTCC) waste management, not the individual NRC licensee/DOE contract holder.

In our view, Waste Confidence has always had two critical components – one, a finding that our generation has the capability of creating technologies that could minimize exposures to humans and the environment from the harmful effects of spent fuel and second, that our society has the will to establish a long-lasting institutional framework and infrastructure to deploy that technological capability for the benefit and protection of future generations. Our concern, simply stated, is that the draft report can be viewed as the beginning of an effort to shift more of the institutional responsibilities onto private parties and absolve the federal government of the need to make progress implementing what has been a uniquely governmental responsibility.

Clearly, the federal responsibility has been the basis of federal policy under the Nuclear Waste Policy Act and the basis for the policy analysis applied to the current “National Context” by the Blue Ribbon Commission on America’s Nuclear Future (BRC). Certainly the BRC final report, while suggesting the creation of a new entity to conduct the execution of our national strategy, maintains the position that it is a unique responsibility of the federal government to foster the development of institutional arrangements leading to the centralized management and ultimate disposal of spent fuel and other identified waste streams. We believe the Commission and the staff would be well served to allow some time to pass, wherein the Executive and Congressional branches of government have an adequate opportunity to digest and act upon the BRC final report, before making decisions about and spending resources on future waste management scenarios.

This belief holds true especially, and unfortunately in our view, because the Draft Report contains assumptions that disregard the established bases for Waste Confidence and suggest the necessity for action by licensees of permanently shut down facilities that create a number of conflicts with previous regulatory decisions.

The first conflict arises from regulatory decisions authorizing the sites to be entirely decommissioned, including the removal of the spent fuel pool, and findings that the material could be stored in dry casks on ISFSIs since the Department would soon remove the material for management and disposal. However, the Draft Report notes that in an extended onsite storage scenario, one of the future actions to be

considered may be a requirement for the construction of repackaging facilities at permanently shut down facilities where the NRC has approved the removal of such facilities. The reason why some new facilities would be needed is the Department of Energy's failure to meet its statutory and contractual obligations.

There are other such conflicts, including future security considerations, whose impacts will be traced to the Department's failure to meet its statutory and contractual obligations to remove fuel and GTCC from our sites.

We would note that the DPC previously commented to the NRC on February 6, 2009² with regard to the NRC's proposed rule change to 10 CFR Part 51 and related waste confidence decision update that the Commission should make clear to the DOE its expectation that the DOE should start to show progress towards a solution in accordance with its obligations under the NWPA, "[O]therwise the Commission's intent to not support on-site storage for spent fuel for 'an indefinitely long period of time' will be increasingly unenforceable and its meaning diminished with respect to these permanently shut-down sites." The DPC believes the Commission should not undertake any effort to update the Waste Confidence EIS and the assumptions on which it is based until it re-examines its policies and regulatory footing regarding spent fuel management at permanently shutdown sites, especially absent consideration of the policy discussions that the BRC recommendations are intended to foster.

The DPC would also point to the Commission's statements in its Waste Confidence proceedings that indicate that the Commission's intent is that the Waste Confidence rule should not be interpreted as a Commission endorsement for indefinite on-site storage. We believe that the assumptions document should list the specific measures that the NRC staff and/or the Commission has taken/are taking to re-enforce that statement of intent, and how this effort is consistent with that intent. It would also seem wise for the Commission and the NRC staff to hear from the BRC, and to determine what changes to national policy evolve, and how Commission actions may be affected. Absent such a list and an exploration, this effort stands out as an activity that would undermine that intent.

The DPC recognizes that addressing the current predicament on spent fuel management has executive and legislative branch implications. We believe that a re-examination and articulation of your expectations on how to prevent storage from becoming unacceptably long-term at this time can only result in enhancing any executive and legislative actions that may arise in the near-term.

As a final thought, we ask the NRC staff and the Commission to take note of the work of the Blue Ribbon Commission in emphasizing its recommendation on the need for

² Letter from Michael S. Callahan on behalf of the DPC to Ms. Annette Vietti-Cook dated February 6, 2009: Decommissioning Plant Coalition Comments on U.S. Nuclear Regulatory Commission Proposed Rule 10 CFR 51 *Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operations* (73 Fed. Reg. 59547) and related *Waste Confidence Decision Update* (73 Fed. Reg. 59551), each dated October 9, 2009.

a consensus based approach for the successful siting of spent fuel storage and disposal facilities. As the staff and Commission delve into the assumptions necessary to support on site storage for the 100 – 300 year period, please recognize that you do so without taking that recommendation into any account. State and local governments never had a chance to agree to be the location of an interim storage facility for the period since 1998, and have no chance to be part of a consensus based process to site de facto intermediate and long-term storage facilities in the work that is underway here, and others that are underway elsewhere in the staff.

We appreciate the opportunity to provide comments on this draft and would like to suggest that a full discussion of our and others comments soon take place in public forum and that the Commission be updated on comments generally prior to the publication of any final report. April 2012 is optimistic for publishing a final report under the circumstances.

We would be pleased to answer any questions and participate in public discussions of our comments.

Sincerely,

/ s /

Michael S. Callahan

On behalf of the Decommissioning Plant Coalition

Appendix – Specific Comments

Without in any way diminishing the importance with which we offer our general policy comments, we offer the following specific thoughts on elements of the Draft Report.

We note that section 8 makes no reference to assumptions or scenarios that include the management or removal of reactor generated Greater-Than-Class C (GTCC) waste. We note that:

- 1) Commission regulations, as an artifact of the now moribund DOE HLW program, allow the Department to propose something other than deep geologic disposal for GTCC waste.
- 2) Many overlook that some permanently shut down sites have or will have reactor generated GTCC stored in dry casks.
- 3) Contrary to Court decisions, some assume that the GTCC will not be addressed at the same time in the future as the spent fuel is removed.

The DPC believes it is time to end these assumptions and oversights, that the Commission should recognize that the Department has no alternate plan for the removal of reactor-generated GTCC, and remove the provision that would allow the Department to propose disposal or removal separate from spent fuel.

Section 8.1 (3)

Note this assumption is flawed for permanently shut down facilities where the NRC approved the decommissioning of spent fuel pools. This omission will deeply flaw this assumption absent the type of re-examination we urge. We believe that the assumption ought to be changed to provide that any need to re-package fuel and/or GTCC at decommissioned plants lacking a spent fuel pool will be the responsibility of the DOE. The assumption should include an NRC requirement that the Department soon demonstrate the capability to fulfill that responsibility.

We also disagree with the assumption that some percentage of plants that shut down in the future will include wet pool storage as a long term storage option, certainly with respect to single unit site as that would prevent them from fully decommissioning their plant sites (as all of the DPC sites have done) and would introduce significant spent fuel litigation damages amounts. Further, such an assumption also prejudices and brings prejudice to the question as to whether the NRC should evaluate a regulatory requirement for future single unit plant sites that permanently shutdown. Such a question itself entails a detailed study for a wide variety of assumptions and impacts including whether the requirement to keep their fuel pools operational is to be available for the federal government to repackage the dry storage canisters for extended (centuries long) storage at the sites and ultimate removal and transportation of the canisters by the federal government to what type of storage and or disposition.

Section 8.1 (4)

This assumption again is flawed due to the decommissioning of spent fuel pools. One cannot consider the impacts of such repackaging until the Commission decides whether such repackaging is part of a sound regulatory program at decommissioned sites.

Commissioners, notably former Commissioner McGaffigan, commented negatively in the past when DOE proposed discarding licensed for transportation casks in favor of repackaging in standard transport casks, especially when considering worker dose, on site.

Section 8.1 (5)

This basic assumption seems not grounded in thorough understanding of the issues and impacts involved in licensees rebuilding spent fuel pools or other repackaging facilities on their sites.

Major impacts would be on those facets for which dollars and dose considerations are not part. The Commission would forfeit the remaining good faith of its community stakeholders and local and state officials that are still waiting for the federal government to live up to its statutory and contractual responsibilities. In forging its shut down agreements with licensees, these officials did so in an era in which it would rely on NRC commitment to keep watch over the sharply reduced radiological hazards at our sites. It took advantage of that commitment to allow a wide variety of other uses for the local environs.

Issuing building permits or responding to increased radiological concerns was not part of their considerations. Imposing large NRC construction and/or equipment requirements will send a clear message that the NRC is now a willing part of the federal government's failure to meet its obligations by implicitly sanctioning on-site storage for a period of 100-300 years hence. The NRC needs some valid way of assessing these hard to quantify impacts. They are, and will be, real.

Beyond that, the assumption reflects a somewhat casual assessment of the difficulty imposing such requirements would have on communities and licensees in terms of permitting, revisions to rate structures, amendments to site use agreements, and other impacts we believe the staff does not fully appreciate or capture.

8.1 (6)

The assumption that licensees will maintain current facilities and activities, including spent fuel repacking during the storage period is not currently viable at the decommissioned sites, since repackaging facilities do not exist at these sites.

Further, the staff makes the following assumption here:

"The responsible entities will provide the necessary financial resources for operating, securing, and maintaining storage facilities for extended periods of time, regardless of cost."

We agree that we will keep our sites safe and secure for as long as the material is stored on-site. While the staff assumption is literally true, staff makes judgments that are speculative and pre-decisional unless and until the Commission undertakes a re-examination as we suggest at the outset of our comments.

Otherwise, we believe that the proper assumption for permanently shut down facilities that do not have repackaging capability is that the federal government will honor its statutory and contractual requirements which may include removing the fuel and GTCC to a Consolidated Interim Storage facility. We believe there exists a consensus to do so, and the DPC can provide a compendium of recent government and non-government stakeholders who have endorsed this principle. We believe that a Commission re-examination will result in NRC endorsement as well as it will be found consistent with best practices from management, resource, and security viewpoints. Further, the assumption that that licensees will maintain current facilities and activities, including spent fuel repacking during a centuries long storage period raises significantly the spent fuel litigation damages and related implications that will need to be addressed by the EIS.

8.1 (9)

The DPC is attempting to fully participate in the activities associated with the referenced prospective rulemaking on ISFSI security. We continue to be hampered by the lack of cleared individuals for each of our sites to participate. We cannot make a completely informed comment on this assumption until we can fully participate in those referenced activities.

However, based on our current understanding of the direction the staff is taking with respect to revisions to the ISFSI security related requirements, there will be significantly increased capital and operational security related cost impacts that will need to be factored into and addressed in the EIS scope and assumptions. The DPC commented to the NRC regarding Draft Regulatory Guidance DG-5033 on October 13, 2011.

8.2 Scenario One

We believe that for facilities where the spent fuel pool has been decommissioned, this scenario should include the assumption that spent fuel and GTCC will be removed by the federal government from these sites pursuant to existing statutory and contractual authority, which may include shipment to a Consolidated Interim Storage facility, obviating the need for reconstruction of repackaging infrastructure.

8.2 Scenarios Two & Three

We believe that these scenarios should be based on the assumption that material from our facilities will be removed first as a priority, consistent with the findings of the BRC and the consensus that exists for that priority. We also believe that the Commission's re-examination would endorse such a priority.

9 Impacts Analysis

We believe the staff must include, at a minimum, the costs of new requirements such as reacquisition of property and new construction, as well as the non-quantifiable impacts we list under 8.1 (5).