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November 16, 1992

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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Director, Office of Nuclear Reactor Regulation

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| In the Matter of<br><br>THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL.<br><br>(Perry Nuclear Power Plant) | Docket No. 50-440 (2.206) |

LICENSEES' RESPONSE TO THE LAKE COUNTY BOARD OF COUNTY COMMISSIONERS' 10 C.F.R. § 2.206 PETITION

The Cleveland Electric Illuminating Company and its co-owners[1/] of the Perry Nuclear Power Plant, Unit 1 ("Licensees"), hereby respond to the "Petition for Action to Relieve the Undue Risk Posed by the Construction for the Low Level Radioactive Waste Site at the Perry Plant" (the "Petition") filed by the Lake County Board of County Commissioners ("Lake County") pursuant to 10 C.F.R. § 2.206. In summary, Lake County (1) has not met the legal standards for initiation of a proceeding or enforcement action under 10 C.F.R. § 2.206, (2) has provided no evidence that the construction of a low level radioactive waste ("LLW") storage facility at Perry is a fundamental change in the operating license of Perry, and (3) has provided no basis to

1/ CEI holds the operating license for the Perry Nuclear Power Plant, Unit 1 along with Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and The Toledo Edison Company.



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support its request that construction of the storage facility be suspended until an environmental impact statement is prepared assessing the risks arising out of the storage of LLW at Perry or until NRC issues regulations governing storage of LLW.

## I. Summary of Petition

On September 29, 1992, Lake County filed the Petition with the Director, Office of Nuclear Reactor Regulation pursuant to 10 C.F.R. § 2.206. The Petition urges a public hearing be held prior to construction of a Low-Level Radioactive Waste Storage and Processing Facility ("LLW facility") at the Perry site,[2/] that construction of the LLW facility be suspended until an environmental impact statement is prepared assessing the risks associated with the storage of LLW at Perry and NRC institutes regulations regarding the on-site storage of radioactive waste.

As the basis for its requests, the Petition alleges that the LLW facility will not in fact be temporary. The Petition cites

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2/ Lake County makes this request despite having had the opportunity to attend two separate public meetings held in connection with this very issue. On August 24, 1992, Licensees voluntarily held a public meeting pursuant to Lake County's request. The members of the public who attended that meeting heard extensive presentations on the planned LLW facility at Perry by representatives of Licensees, NRC, the Midwest Interstate Low-Level Radioactive Waste Commission, and Ohio LLW generators, and had a full opportunity to ask questions of the speakers. In addition, on October 1, 1992, NRC conducted a public meeting to explore the issues surrounding the storage of LLW at Perry at which members of NRC headquarters and regional staffs answered numerous questions concerning the LLW facility.

the alleged breakdown of the Midwest Compact, and the failure of Ohio to enact enabling legislation for a permanent LLW waste disposal facility, as bases for the assumption that the LLW facility at Perry will in effect be a permanent disposal site. As a result, the Petition claims that Licensees must obtain 10 C.F.R. Part 30 licensing approval before constructing the facility. As further support for demanding an environmental impact statement, the Petition states that on-site storage of LLW was not contemplated in Perry's original design, and thus not assessed in the Perry environmental impact statements. The Petition also demands that NRC conduct an evaluation pursuant to 10 C.F.R. § 61.50.

None of the facts presented in Lake County's petition support the relief sought; nor do any of the cited NRC regulations apply to the LLW facility. Therefore, the Petition should be denied.

## II. Description of the LLW Facility.

Licensees intend to build the LLW facility and use On Site Storage Containers ("OSSC") to process and temporarily store low level radioactive waste at Perry.[3/] The storage portion of the LLW facility -- the Radwaste Interim Storage Building (the "Storage Building") -- will be constructed of pre-cast concrete wall

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3/ A more complete description can be found in Safety Evaluation No. 92-161, the comprehensive 10 C.F.R. § 50.59 safety evaluation prepared in connection with the design and construction of the LLW facility.

panels, and will be approximately 66 feet wide by 100 feet long. The maximum height of the Storage Building will be approximately 31 feet. The Storage Building will be located approximately 44 feet east of the Discharge Entrance Structure, and approximately 270 feet south of the bluff above Lake Erie. The distance from the Storage Building to Perry's shore line protection system will be approximately 350 feet.

The west, north, and east walls of the Storage Building are composed of one foot thick concrete, providing adequate shielding to maintain site boundary dose rates within the limits set out in Generic Letter 81-38. The use of twelve inch thick shield walls will assure that radiation levels (conservatively assuming a fully loaded Storage Building) will be negligible at the nearest land site boundary, which is approximately 2700 feet away at the west end of Lockwood Road in North Perry Village. A six inch thick pre-cast concrete plank roof over the Building will shield against skyshine radiation. Finally, a two foot thick shield wall between the storage and processing facilities is designed to keep radiation levels in the processing facility to as close to background radiation levels as possible.

The part of the LLW facility where LLW processing will take place -- the Processing Building -- will be a pre-engineered cold-formed steel structure with a stress skin steel panel side wall. It will be adjacent to the Storage Building, and its roof will be supported by the south wall of the Storage Building. The

Processing Building will be 133 feet long by 51 feet wide, and at minimum will be twelve feet high at the eave of the building. The shredder/compactor located within the Processing Building will be surrounded by a one foot thick concrete wall to minimize radiation exposure outside of the shredder/compactor room while the waste is being packaged. Finally, the columns, beams, and ceiling will be covered with a minimum of two layers of drywall for fire protection purposes. The activities to be conducted in the Processing Building are already permitted under the plant's current operating license.

An OSSC is a concrete structure with heavy steel reinforcement. Each OSSC will have a removable lid that fully exposes the available internal storage volume. Its mating surface will be gasketed with the main container and sloped to prevent rain intrusion. Solidified and dewatered resin will be placed in the OSSC's in High Integrity Containers that are designed and certified to maintain their integrity for a minimum of 300 years. Moreover, a back-up leakage protection system will be installed inside each OSSC, and sampling/drain capability will prevent inadvertent leakage.

In order to ensure shielding uniformity and integrity, each OSSC is radiographed. Also, each OSSC is painted internally and externally with two coats of epoxy paint for easy decontamination. The inherent strength designed into each OSSC, combined

with its weight, provides a structure that is earthquake-proof and tornado-proof.

The LLW facility has been designed to be consistent with the Ohio Basic Building Code Use Group H-4 (a hazards classification based upon the type of material stored in the facility, which includes radioactive materials) and Construction Classification Type 2-A (a construction classification based on fire resistance rating requirements of structural elements). The Use Group H-4/Construction Classification Type 2-A requires that the facility's structural load bearing columns and all ceilings below 15 feet in height be provided with a two hour fire rated barrier. In addition, the LLW facility is being constructed in accordance with (1) Seismic Zone 1 criteria for earthquake protection, and (2) all applicable building and fire codes and standards, including but not limited to the Ohio Basic Building Code, National Electrical Code, and Ohio Fire Code. The buildings are curbed and have no floor drains to external release points. Therefore, no potentially contaminated water may be discharged directly to the environment.

External flooding has also been analyzed. The top of the LLW facility curb is at the 623'3" elevation. The probable maximum Lake Erie surge run-up would be 607.9', approximately 15 feet below the curb. If the probable maximum precipitation for the site would occur and the storm drainage system were blocked, the site grade would prevent the water level from exceeding 620'6",

2'9" below the curb. Moreover, if the probable maximum flood for the major stream that flows near the site were to occur, a natural ridge adjacent to the stream would channel the water away from the LLW facility.

## III. No NRC Enforcement Action Is Warranted Because the Petition Does Not Raise Substantial Health and Safety Issues

Lake County has not met the NRC's legal standards for instituting a proceeding under 10 C.F.R. § 2.206. The NRC will institute a proceeding to suspend a license or for other action as may be proper under § 2.206 only when the petition alleges "substantial health and safety issues." Arizona Public Service Co. (Palo Verde Nuclear Generating Station, Units 1, 2, and 3), DD-92-1, 35 NRC 133, 143-44 (1992); Washington Public Power Supply System (WPPSS Nuclear Project No. 2), DD-84-7, 19 NRC 899, 923 (1984); Consolidated Edison Co. of New York (Indian Point, Units 1, 2, and 3), CLI-75-8, 2 NRC 173, 176 (1975). Courts interpreting § 2.206 have also applied this standard. See, e.g., Florida Power & Light v. Lorion, 470 U.S. 729, 732 (1985) ("The Commission interprets § 2.206 as requiring issuance of an order to show cause when a citizen petition raises 'substantial health or safety issues.'"); Lorion v. United States Nuclear Regulatory Comm'n, 785 F.2d 1038, 1041 (D.C. Cir. 1986) (NRC only required to issue a show cause order pursuant to § 2.206 request if it decides that "a substantial health and safety issue" has been

raised.). Absent such a showing, no action need be taken on a request. See, e.g., Philadelphia Electric Co. (Limerick Generating Station, Units 1 and 2), DD-85-11, 22 NRC 149, 154 (1982).

The NRC is not required to conclude that a substantial health and safety issue has been raised merely because a § 2.206 petition has been filed. The NRC "is not obligated to take enforcement action 'whenever [the NRC] receive[s] information adverse to the integrity of existing nuclear power safety or safeguard systems.'" Lorion, 785 F.2d at 1041 (quoting In re Nuclear Regulatory Comm'n, 5 NRC 16, 21 (1977), in turn citing Nader v. Nuclear Regulatory Comm'n, 513 F.2d 1045, 1054-55 (D.C. Cir. 1975)). In addition, the Director is not required to accord presumptive validity to every assertion of fact in a § 2.206 petition. See Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear-1) CLI-78-7, 7 NRC 429, 432-33 (1978). Nor must the NRC grant a hearing simply because a petitioner requested one. See Nuclear Information and Resource Service v. United States Nuclear Regulatory Comm'n, 918 F.2d 189, 195 (D.C. Cir. 1990) ("Section 2.206 does not provide a hearing on request as § 189(a) requires.").

The NRC, in its discretion and after an inquiry appropriate to the facts alleged, must decide whether the allegations raised by Lake County should be considered substantial, and thus whether enforcement action is required. Lorion, 785 F.2d at 1042 (citing Porter County Chapter v. Nuclear Regulatory Comm'n, 606 F.2d

1363, 1369 (D.C. Cir. 1979)). "[S]afety should be properly assessed on the basis of whether present systems can assure reasonable protection of the public health and safety." Metropolitan Edison Co. (Three Mile Island Nuclear Station, Unit 1), ALAB-729, 17 NRC 814, 828 (1983). A finding of absolute certainty, or complete or perfect safety, is not required. Id. Rather, it is incumbent on the NRC to weigh the state of the art, the risk of accidents, the record of past performance, the need for further improvement in nuclear safety matters, and other considerations in determining whether enforcement action is needed. Id. In sum, the Director has broad discretion to deny a § 2.206 petition. State of Ohio ex rel. Celebrezze v. Nuclear Regulatory Comm'n, 868 F.2d 810, 815 (6th Cir. 1989).

Lake County's § 2.206 petition should be denied without a hearing. See Nuclear Information, 918 F.2d at 195 (" § 2.206 petitions . . . may be decided by the Commission without briefing or a hearing."). Lake County's allegations of potential problems or issues regarding the temporary storage of LLW at Perry clearly do not require enforcement action under 10 C.F.R. § 2.202. The facts surrounding the construction of the LLW facility at Perry make clear that Licensees are not only operating within the proper legal framework, but also that there is reasonable assurance that LLW can be stored safely in a properly constructed facility at Perry. Moreover, the analysis below demonstrates that none of Lake County's allegations are relevant to the safe

operation of the LLW facility. See Houston Lighting and Power Co. (South Texas Project, Unit 1), DD-88-9, 27 NRC 648, 649 (1988) ("Allegations deemed not relevant to safe operation of the facility . . . may not receive further consideration.")

In the present case, Lake County has failed to meet the threshold requirement of showing a substantial health and safety issue to justify relief under § 2.206. First, the LLW facility will be a processing and temporary holding facility; Licensees do not plan to store LLW at the facility on a permanent basis. Second, three evaluations under 10 C.F.R. § 50.59 in connection with the design, construction, and operation of the LLW facility demonstrate that the additional storage does not involve any unreviewed safety questions. The Licensees have also complied with the guidelines and safety guidance of Generic Letter 81-38. Third, no environmental impact statement is required for the LLW facility. To the extent environmental concerns need to be considered, the original environmental impact statements prepared in connection with the construction and operation of Perry have bounded all potential risks. Fourth, 10 C.F.R. § 61.50 does not apply to the LLW facility, and NRC need not issue any regulations governing interim storage of LLW. In any case, none of the alleged safety risks raised by Lake County have factual merit.

A. The LLW Facility Will Be a Temporary Facility.

Licensees' plans to construct and operate the LLW facility meet all currently-existing regulations and restrictions applicable to the on-site storage of LLW. In 1981, the NRC issued Generic Letter 81-38, "Storage of Low-Level Radioactive Waste at Power Reactor Sites." That letter provided guidance to power reactor licensees for additional on-site storage of LLW. In addition to providing radiological safety guidance for such additional LLW storage capacity, the Generic Letter also provided procedural guidance to determine the appropriate licensing action.

As set forth in the Generic Letter, if:

(1) an evaluation pursuant to 10 C.F.R. § 50.59 has been carried out;

(2) the existing license conditions and technical specifications do not prohibit increased storage;

(3) there are no unreviewed safety questions; and

(4) the proposed increased storage capacity does not exceed the generated waste projected for five years,

a licensee may provide the increased storage capacity, document the § 50.59 evaluation, and report it to the NRC annually or as specified in the license. No specific license application or amendment is needed.

Consistent with Licensees' intent to process and temporarily store LLW on-site at the LLW facility, Licensees complied with

the requirements of Generic Letter 81-38. The Licensees have prepared three safety evaluations under 10 C.F.R. § 50.59 to assess the risks associated with the temporary storage of LLW at Perry, evaluating the radiological effects of interim storage, and location, design, construction, and occupancy of the LLW facility. The § 50.59 evaluations disclosed no unreviewed safety questions, and were documented and made available to NRC. The evaluations also show that the additional storage does not require any change in existing license conditions or technical specifications. Nor do the existing license conditions or technical specifications prohibit increased storage.

Finally, the § 50.59 evaluations demonstrate that the proposed increased storage capacity does not exceed the generated waste projected for five years. Perry's maximum storage size will be administratively controlled through an inventory system designed to ensure compliance with the five year requirement. The LLW facility will have a physical inventory system that will track each storage container placed into storage. This system will record the physical position of each container, the waste type, date of storage, the curie content, and the dose rate. With the placement of the first container in storage, the five year interim storage restriction will begin. No additional waste will be placed into storage once the oldest box has been in the building on the last day of its fifth year of storage, without

prior application for and approval of a separate license under 10 CFR Part 30.

Despite this well-documented plan and methodology, Lake County's Petition contends that the LLW temporary storage facility will in effect be a permanent storage facility. In support of this contention, Lake County states that Ohio will not and cannot be operating a permanent LLW disposal site within the next five years, thus making it inevitable for Licensees to store LLW at Perry beyond the five year temporary storage period specified in Generic Letter 81-38. Lake County cites delays in establishing regional permanent disposal facilities pursuant to 42 U.S.C. §§ 2021b-2021j as support for this conclusion.

Lake County's contention that the LLW temporary storage facility will be a de facto permanent facility is speculation. Lake County admits that the Barnwell, South Carolina LLW disposal site will continue to accept LLW from Licensees until June, 1994. Barnwell may continue to accept LLW from Licensees after June, 1994 as well. In addition, other LLW disposal sites, including the sites in Beatty, Nevada and Hanford, Washington, might again become available for LLW disposal. Federal LLW disposal facilities may also become available. Thus, it is hardly a certainty that storage capacity beyond five years will be required by the Perry plant or that the LLW facility will become a permanent storage facility at Perry. If indeed it becomes clear that temporary LLW storage capacity for more than five years is needed,

then Licensees at that time will have the option to submit an application for a separate license pursuant to 10 C.F.R. Part 30. In any event, the contention that any on-site storage beyond the five year temporary LLW storage period provided for in Generic Letter 81-38 constitutes de facto permanent storage is unfounded.

Licensees acknowledge that the permanent disposal of LLW is a national problem, and not a problem peculiar to Ohio. See New York v. United States, 112 S. Ct. 2408 (1992). NRC is also obviously aware of the LLW disposal situation, as evidenced by the issuance of Generic Letter 81-38. Since, as Lake County readily admits in its petition, the five year temporary LLW storage period provided in Generic Letter 81-38 is an NRC guideline and is not a mandatory limit or restriction, perhaps NRC in a future Generic Letter might choose to extend the allowable time for temporary storage of LLW on-site to accommodate the exigencies of LLW permanent disposal. In the meantime, Licensees are not constructing the temporary LLW storage facility to circumvent the permanent LLW disposal issue.

B. The Issues Raised By Lake County in the Petition Do Not Raise Substantial Health and Safety Concerns.

The temporary nature of the LLW storage facility aside, the proper inquiry in assessing a 10 C.F.R. § 2.206 petition is whether Lake County has raised significant health and safety concerns. See Arizona Public Service Co. (Palo Verde Nuclear

Generating Station, Units 1, 2, and 3), DD-92-1, 35 NRC 133, 143-44 (1992). It has not done so. As stated earlier, Licensees' 10 C.F.R. § 50.59 evaluations demonstrated that there are no unreviewed safety questions associated with the LLW facility. Moreover, none of the alleged safety risks raised by Lake County warrant an enforcement action by the NRC pursuant to § 2.206.

1. Lake County Offers No Evidence Showing That Seismic Activity Near Perry Raises Substantial Health and Safety Issues.

The NRC has already decided that seismic activity near and around Perry did not raise a serious or significant safety concern. See Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), DD-86-4, 23 NRC 211 (1986). On February 3, 1986, the Ohio Citizens for Responsible Energy, Inc. ("OCRE") filed a § 2.206 petition challenging the construction and operation of Perry, alleging that the seismic design of Perry was inadequate. This motion was filed in response to the January 31, 1986 earthquake that occurred ten miles from the plant. The earthquake measured 5.0 on the Richter scale. In support of its motion, OCRE submitted a newspaper article reporting that vibratory ground motion at the plant during the earthquake exceeded the peak acceleration for which the plant had been designed.

The NRC staff studied the available data and determined that, while the earthquake was severe and was different in some respects from the archetype of earthquake motion used in

designing the plant structures, the high frequency energy levels that had exceeded the "design spectrum" for ground motion did not raise a safety concern. The Director therefore denied the § 2.206 petition. In support of this denial, the Director set forth detailed facts supporting the conclusion that no adequate basis existed to deny further licensing or order the other measures requested by OCRE.

The Director indicated that following the earthquake, the NRC Staff and Licensees conducted an extensive investigation of the effects of the earthquake upon Perry. Detailed inspections by Licensees' personnel, the NRC Staff, a Seismic Qualification Review Team, and the NRC's Region III Staff revealed no earthquake-related damage to any systems, structures, or components of Perry. Id. at 215. In addition to these walkdowns and visual inspections, Licensees and the NRC Staff evaluated the safety impact of the eartnquake from an engineering standpoint. The NRC Staff concurred with Licensees in finding that the earthquake represented a negligible effect on the future safe operation of Perry. Id. at 217. In sum, the NRC Staff held "no significant equipment or structural damage has been found that could be attributed to the Ohio earthquake of January 31, 1986." Id.

The NRC also reevaluated the geology and seismology of the Perry site after the 1986 earthquake in accordance with 10 C F.R. Part 100, Appendix A. The NRC specifically determined that no known capable faults exist in the plant area. Id. at 219.

Moreover, the NRC Staff, U.S. Geological Survey, and U.S. Army Corps of Engineers geologists examined a series of minor folds and shallow faults that were identified with the excavations for Perry's main structures, and concluded that the shallow faulting and associated limited surficial deformation presented no hazard to the Perry facilities. Id.

Thus, after reviewing OCRE's claims, the NRC determined that none of OCRE's earthquake-related allegations appeared to have a significant implication for the safety of Perry. Id. at 222. The U.S. Court of Appeals for the Sixth Circuit in State of Ohio v. Nuclear Regulatory Comm'n, 814 F.2d 258 (6th Cir. 1987) upheld the NRC's denial of OCRE's § 2.206 petition.

Lake County in its Petition relies heavily on the March, 1987 report by Y.P. Aggarwal entitled Seismicity and Tectonic Structure in Northeastern Ohio: Implications for Earthquake Hazard to the Perry Nuclear Power Plant to support its claim that risks to Perry associated with earthquakes have been erroneously analyzed. The NRC has already reviewed this report in responding to a second § 2.206 petition filed by OCRE. See Cleveland Electric Illuminating Company (Perry Nuclear Power Plant, Units 1 and 2), DD-88-10, 27 NRC 657 (1988). In that proceeding, OCRE filed a § 2.206 petition again alleging various inadequacies in the seismic design of Perry. OCRE's petition was based on the 1987 Aggarwal report, which questioned Perry's ability to withstand a major earthquake. After thoroughly reviewing the report, the NRC

found Dr. Aggarwal's conclusions to be unpersuasive, and reaffirmed its conclusion that the seismic design of Perry was adequate and appropriate. Id. at 662. The NRC thus refused to suspend the Perry Unit 1 operating license, and denied OCRE's petition. The U.S. Court of Appeals for the District of Columbia Circuit dismissed OCRE's appeal of the NRC denial of the § 2.206 petition. See Ohio Citizens for Responsible Energy v. U.S. Nuclear Regulatory Comm'n, No. 88-1676 (Jan. 23, 1990) (order dismissing OCRE's appeal).

Licensees accounted for seismic considerations when designing the LLW facility. No NRC requirements setting forth seismic criteria for this type of facility exist. Nonetheless, as the final § 50.59 safety evaluation indicates, the LLW facility is being constructed in accordance with Seismic Zone 1 criteria with an Occupancy Importance Factor of 1.5. This ensures that the facility will remain stable when structural members are strained into the inelastic range during the maximum predicted earthquake for the State of Ohio.

Like OCRE in its first seismic § 2.206 petition, Lake County makes "only the barest of allegations" that potential earthquakes near Perry raise safety concerns, and makes "no showing that it has anything to contribute to the analysis of the plant's seismic security." See State of Ohio, 814 F.2d at 262. NRC has already reviewed the Aggarwal report, and found it unpersuasive. Lake County offers no additional evidence to substantiate its claims.

NRC should therefore deny its § 2.206 petition. Like OCRE, Lake County has "no significant contribution to make to further staff analysis" of earthquake-related safety issues. Id.

2. Lake County Offers No Evidence Showing That the LLW Facility's Effect on Groundwater Raises Substantial Health and Safety Issues.

Like the earthquake, the impact of the LLW facility on the Perry site's groundwater does not raise substantial health and safety issues. Perry's potential impact on the area's groundwater was extensively reviewed in both the Final Environmental Statement related to the operation of Perry Nuclear Power Plant, Units 1 and 2, NUREG-0884, Docket Nos. 50-440 and 50-441 (August 1982) ("FES"), and the Safety Evaluation Report related to the operation of Perry Nuclear Power Plant, Units 1 and 2, NUREG-0887, Docket Nos. 50-440 and 50-441 (May 1982) ("SER") and its supplements. In both reports, no safety concerns were raised in connection with the operation of Perry and the Perry site's groundwater.

The FES found that the formation that contains groundwater--the lacustrine soil deposits--consists of low permeability fine sands, silty sands, and silty clay. The average thickness is 7.3 m (24 ft), and the underlying glacial till is essentially impervious (§ 4.3.4). The FES concluded that Perry "will have no measurable effect on the groundwater

resources of the area," principally because Perry uses no groundwater for its operation, because no effluents will be discharged into the groundwater as a result of plant operation, and because of the low-water-yielding, impervious nature of the soils under the plant materials (§§ 5.3.1.2, 9.5.2). The staff also concluded that "[t]here is no groundwater usage which could be affected by contamination at the plant." (§ 5.9.4.1.4.5).

The SER arrived at similar conclusions: "The staff further concludes that plant operation will not adversely affect regional groundwater supplies nor will groundwater adversely affect the plant . . . ." (§ 2.4.9). Like the FES, the SER concluded that the materials underlying Perry were virtually impermeable. (§ 2.4.5). The SER also analyzed the impacts of accidental releases of liquid effluents in ground and surface waters, and concluded that Perry "meets the requirements of 10 C.F.R. 100 with respect to potential accidental releases of radioactive effluents." (§ 2.4.8). Supplements to the SER neither amend nor alter these conclusions.

The exhaustive analyses of the groundwater issue at the licensing and operational stages of Perry bound the risks presented by the LLW facility at Perry, and reveal no significant safety risks to the site's groundwater. Lake County, in its Petition, draws absolutely no connection between the LLW facility and potential contamination of the site's groundwater. Thus,

Lake County raises no significant health and safety issues with respect to the LLW facility and Perry's groundwater.

### C. No Environmental Impact Statement Is Required Before the Licensees Construct the LLW Facility.

In the Petition, Lake County contends that an environmental impact statement ("EIS") concerning the storage of LLW for up to and beyond five years is required before the Licensees construct the LLW facility. Lake County cites several grounds for this assertion. First, Lake County claims an EIS is mandatory pursuant to 10 C.F.R. Part 30. Second, Lake County claims that on-site storage of LLW was not anticipated in Perry's original design, and therefore not properly assessed in the FES. Neither of these claims have merit, and no EIS is required.

#### 1. Absent a Federal Action, No EIS Is Required.

The National Environmental Policy Act ("NEPA") requires the preparation of an EIS where there is "a major Federal action significantly affecting the quality of the human environment." 42 U.S.C. § 4332. If there is no major Federal action, NEPA does not come into play. The construction and operation of the LLW facility does not involve a major Federal action. Since a licensee may undertake to build such a facility without prior NRC approval, there is no "Federal action" triggering NEPA's EIS requirement.

2. No Part 30 License Is Required Since Licensees Do Not Intend to Store LLW for More Than Five Years.

Lake County argues that an EIS is required because a Part 30 license must be obtained for the LLW facility. As stated above, Licensees do not plan to store LLW for more than five years. Thus, no 10 C.F.R. Part 30 license is required. LLW will be stored at Perry on an interim basis until it can be transported to a permanent disposal facility. The procedures proposed by the Licensees for operating the LLW facility will ensure compliance with the five-year period set out in Generic Letter 81-38. As NRC stated in the Generic Letter, Licensees must follow the application and review procedures of Part 30 only "[f]or proposed increases in storage capacity for more than five years (long term) . . . ." Again, if it appears that the LLW facility may be needed beyond the five year period, Licensees at that time will comply with Part 30.

Even if a separate Part 30 license were required, an EIS would not be mandated. NRC regulations require that a Part 30 license applicant submit an environmental report only where "the Commission has determined pursuant to Subpart A of Part 51 of this chapter [that the licensed activity] will significantly affect the quality of the environment." 10 C.F.R. § 30.32(f). Nor does Part 51 require the preparation of an EIS in this case. 10 C.F.R. § 51.20. Lake County has presented no evidence to the contrary.

3. Even If An Environmental Analysis Were Required for the LLW Facility, the Existing Perry EIS Bounds Its Environmental Impacts.

Even if an environmental assessment were required at this time, the two FES's completed in connection with the construction and operation of Perry already bound all possible environmental risks and impacts posed by the LLW facility. The LLW facility will be constructed on land that was cleared for construction of the Perry facility. These impacts were thoroughly analyzed in connection with construction of the Perry facility itself. The impacts of LLW facility construction are an insignificant fraction of the construction impacts already analyzed and incurred when the Perry facility was built. Furthermore, the FES thoroughly analyzed the far greater potential environmental risks of radiation exposure and potential accidents from the normal operation of Perry, and found no significant environmental risks or impacts stemming from this activity either. The FES arrived at the following conclusions:

1. Operational land use impacts will be small. (FES Sections 4.2.1 and 4.2.2).

2. Neither lake fishing activity nor fishery harvests will be affected by plant operation. (FES Sections 5.3.2, 5.5.2.1, and 5.5.2.2)

3. The operation of the plant will have no impacts on endangered or threatened species. (FES Section 5.6)

4. The risk associated with accidental radiation exposure is very low. The FES considered the potential environmental impacts from a broad spectrum of possible accidental releases of radioactive materials into the environment, and included postulated design-based accidents

and more severe accident sequences that lead to a severely damaged reactor core or core melt. The FES concluded that the risks and impacts from potential accidents at the site are small when compared with the risks of early fatality from other human activities in a comparably sized population. (FES Section 5.9.4.1.5).

5. No significant environmental impacts are anticipated from normal operational releases of radioactive materials. The estimated maximum individual dose for a member of the public subject to the maximum exposure will be very small compared to the dose limits specified in 10 C.F.R. Part 20. As a result, the FES found that there would be no measurable radiological impact on members from routine operation of the plant. (FES Section 5.9.3).

A review of the FES thus suggests that any environmental impacts arising from the construction or operation of the LLW facility would be a very small subset of the impacts already analyzed in the EIS's prepared for Perry.

D. The Requirements of 10 C.F.R. § 51.50 Do Not Apply to the LLW Facility.

Lake County in its Petition also contends that an evaluation pursuant to 10 C.F.R. § 61.50 is required before Licensees can construct the LLW facility. Specifically, Lake County contends that an evaluation of the risks presented by erosion and earthquakes, and the impact of the LLW facility on the site's ground

water, must be completed. Lake County's contentions reflect a misunderstanding of the applicability and requirements of § 61.50. No § 61.50 evaluation is necessary.

10 C.F.R. Part 61 sets forth the licensing requirements for land disposal of radioactive waste. Section 61.50 in particular sets forth disposal site suitability requirements for land disposal. "Land disposal facility" means the land, buildings, and equipment to be used "for the disposal of radioactive wastes into the subsurface of the land." 10 C.F.R. § 61.2. As the above-description of the LLW facility demonstrates, Licensees are not disposing of LLW into the subsurface of the land at the Perry site; all LLW will be processed and stored in above-the-ground buildings and containers. Thus, the requirements of Part 61 simply do not apply to the LLW facility.

E. Lake County's Request That Construction of the LLW Facility Be Suspended Until the NRC Institutes Regulations Regarding the Storage of LLW Is Inappropriate Under 10 C.F.R. § 2.206.

Lake County's request that construction of the LLW facility be suspended until the NRC institutes regulations regarding the storage of LLW is not appropriate under § 2.206. The NRC so notified Lake County by letter dated October 21, 1992:

> Concerning your request that the NRC promulgate regulations for storing low-level radioactive wastes at nuclear power plant sites, you should refer to 10 C.F.R. [illegible]2 (enclosed) for the Commission's requirements for a proper petition for rulemaking.

The NRC has thus concluded that it will consider Lake County's request for regulations as a separate matter from this Petition. Lake County's request that NRC suspend construction of the LLW facility pending issuance of LLW storage regulations should therefore be denied. In any event, NRC (as with any Federal agency) has the discretion to proceed case-by-case or by rulemaking. See, e.g., Mornings[illegible]e Renewal Council, Inc. v. AEC, 482 F.2d 234, 239 (2d Cir. 1973), cert. denied, 417 U.S. 951 (1974).

IV. Conclusion

Licensees have complied with all applicable rules and regulations for the construction of a temporary LLW storage facility at Perry. Licensees have complied with Generic Letter 81-38 by, among other things, completing three 10 C.F.R. § 50.59 evaluations, which show that no unreviewed safety questions are involved by constructing and operating the facility. Moreover, Lake County in its Petition has not demonstrated that any significant health or safety risks are implicated by the construction or operation of the facility. Lake County has therefore not met the legal standard for instituting a proceeding to suspend a

license or for other action as may be appropriate pursuant to 10 C.F.R. § 2.206. Based on the foregoing, Lake County's Petition should be denied.

Dated: November 16, 1992

Respectfully submitted,

Jay E. Silberg
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UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

'92 NOV 19 P4:09

Before the Director, Office of Nuclear Reactor Regulation

| | |
|---|---|
| In the Matter of | |
| THE CLEVELAND ELECTRIC ILLUMINATING COMPANY, ET AL. | Docket No. 50-440 |
| (Perry Nuclear Power Plant) | |

CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing Licensees' Response to the Lake County Board of County Commissioners' 10 C.F.R. § 2.206 Petition was served by first class U.S. mail, postage prepaid, this 16th day of November, 1992, upon the following:

Office of the Secretary
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
Attn: Docketing & Service Branch

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Dated: November 16, 1992

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