Secretary US NRC
att: Rulemakings and Adjudications Staff:
Public Comment on Docket PRM-72-5
10 CFR Part 72 NEI petition for rulemaking
(page 36647 Fed Reg. June 9, 2000 Vol 65 number 112)

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PETITION RULE PRM 72-5
(65FR36647)

I request that the NRC rewrite this petition to clearly state the issues, reissue the petition, in the clear form, in the Fed. Reg. again for public comment. This petition, as it is now written, does not clearly explain what the result of NRC acceptance of this petition will mean to the public. And as public comment is the main purpose of publishing the petition in the Fed. Reg., it is essential that the public clearly understand the purpose of the petition in order to properly comment on it.

If you look at p. 2 of your NRC Information Digest, it states an NRC goal to inspire public confidence with clear and accurate information. On p. 3 it states "Nuclear regulation is the public's business, and it must be transacted publicly and candidly. The public must be informed about and have the opportunity to participate in the regulatory processes as required by law." There is a section on "clarity" on that page. The one thing that is clear to me in this NEI petition is the complete lack of clarity in what they are actually proposing.

The main proposal is to take away any rulemaking procedures associated with generic dry cask storage. That is a big issue, with many ramifications to the public, that are not even hinted at. (a Federal Register notice is not rulemaking!)

The NRC needs to rewrite the petition clearly explaining every one of these ramifications in such a change.

In exchange for rulemaking procedures, NEI offers a "notice" in the Federal Register for public comment, which is certainly a very different thing. The petition needs to clarify this. What are every ** one of the differences? In a rulemaking procedure for licensing a dry cask design? For a new cask design application? For one already licensed? (Renewal? Changes?) For amending a certificate by rulemaking? Explain this clearly.

Then state clearly how all this would change if NEI had its petition granted, and you decides to propose a rule that would just use a Federal Register Notice in place of rulemaking procedures as they now are. If you then accepted the ruling to eliminate the rulemaking process for dry casks, what are the consequences? The differences? (to vendors, utilities, subcontractors, and most important, the public???) This is not stated in the petition.

The petition does have inferences as to how NEI sees the differences to their advantage. Things would be done FAST for one thing. Things would be done with less "burden" to the NRC for another thing. What does this mean - "burden"? To them, it means less oversight — to me, it means less safety. To them, it means less money spent — to me, it means less integrity in the final product. And we have that final product in our local nuclear plants back yards right now.

It was not that long ago that NRC was asking for changes to part 72 so that they could take enforcement action, as a legally binding requirement, against vendors, utilities ("certificate holders and applicants") as well as, contractors and subcontractors in dry cask storage issues. Why was that? The answer was clear — because of the complete lack of integrity in the dry cask storage fabrication industry and in use at utilities. That has not changed a whole lot. The history of dry cask storage, so far, is full of "holds" on fabrication, "hold" on loading, undocumented welds, flaws in welds evaluated after casks were loaded, nonconformances, violations, and fines. Problem after problem, after problem. And documents not in order. The public, it seems, were the main researchers pushing for resolution of all these concerns. Now the NEI wants to remove public input as much as possible, as well as take as many documents as possible out of public hands. This is just plain wrong.

The petition refers to "intent" of Congress in NWPA. This is a big issue. A legal issue. Where does NEI find the basis for their interpretation of the "intent" of Congress here? They say they "believe" that "more than ten CoCs" issued, sort of fullfills the obligation — and thats enough of that! I disagree. I would argue that the intent of Congress was to have the NRC protect the public health and safety by very carefully evaluating the details of each dry cask storage proposal (and amendment) through rulemaking.

I don't see anything in any "intent" to certify 10 dry cask designs, then eliminate rulemaking, and just put in a Fed. Reg. notice instead. Where does NWPA say that??

The "burden" on the NRC is a result of a lack of integrity in the dry cask storage history. This lack of integrity has hindered the NRC with unnecessary time and money spent constantly evaluating, inspecting, and helping to correct blunders of the industry. That should not be their job.

If the vendors did their homework and provided NRC with document drafts ready to certify, there would have been a lot less time needed by staff to get designs certified. If utilities evaluated changes as they should have, if they documented procedures as they should have, (loading, unloading, seal testing — etc. etc. etc.), then NRC wouldn't have had to spend all that time and money getting things done right. If materials interactions (coatings especially) had been looked at properly by vendors in the 1st place, we wouldn't have NRC staff flying to utilities to inspect hydrogen burns (as at Palisades) and explosions (like at Point Beach) or coatings clouding fuel pools so you can't load (like at Trojan). The mess of dry cask storage was not created by NRC. It was not created by the public. It was created by the lack of integrity in the industry — utilities, vendors, and their contractors and subcontractors. So then why should NRC now "reward" them for this by taking away rulemaking procedures and by

taking public comment and document accessability out of rulemaking procedures? Make no sense to me!

That list of certified cask designs belongs right where it is — in Section 72.214 of the Code — for public access and evaluation and proper rulemaking procedures. NEI's term "to focus" opportunities for public input, means, basically, to eliminate them as much as possible. Their request to "delete", "discontinue", "repeal" parts of the code are in direct conflict with the intent of this part of the code when it was originally put in there. They seem to want to erase all the reasons for it. The NRC set up generic rulemaking and the cask list to get away from site-specific cask rulemaking and public hearings. (It was bad enough that that process was taken away from us.) Now they want to "throw out the baby with the bathwater"!

NEI says they want to direct the agency's and public's resources "away from actions that only demonstrate compliance with existing requirements and guidance". Compliance is what a lot of the major problems with dry cask storage has been all about. If there had been compliance, a lot of time and money would have been saved by NRC and the public. It was the industry that didn't comply after all!

Industry got their use out of 72.48 as much as possible and kept those documents out of public reach, by making them "plant documents". So now, as I understand it, amendments are too much of a problem for them and they'd like to have NRC decide prior to any public notice, whether the amendment

has any "significant" impact or not. If NRC agrees, then the NEI wants the amendment published as immediately effective. If the NRC says "no", then NEI infers it would go in Fed Reg. for public comment. Well, it seems that no amendment would ever be published if the NRC said "no" in the first place. What would be the purpose? NEI and NRC would "work it out" until it was acceptable, with no public input, and then publish it as a "done deal". Right?
What kind of an amendment process is that??
How does that include public insight on health and safety issues before an amendment is "immediately effective"? It doesn't.

NEI's plan appears to be taking a great deal of conservatism out of the rulemaking presently in use. Their list of amendments not likely to involve significant impact is long, and full of phrases like, "compensates by", and "within criteria", and "offset by", "administrative improvements", "credit for" "expansion of", etc. etc. These terms are key phrases to look for when there is a reduction in conservatism. When is the impact "significant"? That term needs clarification and criteria. When are there too many specifications just "within" criteria and not near minimal doses and maximum safety? How do you look at the total ramification of all the reductions in conservatism they ask for? NRC needs to always look closely at the whole cask design and system and how every change affects the

whole. If you don't treat these amendments with the time necessary, we'll be back in the mess we started with — each utility, vendor, contractor, subcontractor doing "their own thing" — making changes all over the place, and the documents in a mess. This is a recipe for disaster in the future. I mean, take a look at some of the NEI considerations:

A. "Increase allowable leak rate but compensate by an increase in fill gas quantity" — I say, no.
B. a more reactive fuel design that could lead to Keff exceeding 0.95, but compensates by an increase in areal poison density — I say, no.
etc. etc. etc. — the amendments they consider here need a great deal of evaluation, and are likely to involve significant impact considerations. If NRC says, "OK — that's it" — no public input. That's not a goal NRC states in its Information Digest and read it. What it amounts to is "wheeling and dealing" with a "give and take" of requirements (If you allow us to break the rules here, then we'll do this or that) — that isn't properly done in just a Fed. Reg. notice.

** And just how would this petition affect cask designs for private interim storage at Utah or Nevada, or for disposal cask designs? This needs to be considered carefully and made clear to the public. Those sites are big issues with the public. They deserve all the input possible. Is this petition proposing to eliminate any of that at all — in any way? If so, say so. This is a major concern.

What is the process NRC is supposed to use

to "repeal" section 72.214 with the list of CoCs? Is it legal? What is the process to be used to "discontinue" use of traditional notice and comment rulemaking for issuing and amending CoCs? Is it legal? Can NRC decide what was the "intent" of Congress? Can NRC eliminate the public in this way? Just because NEI wants it to??

Cask vendors need to frequently amend CoCs NEI says. Why? If they do, it proves that they weren't done right in the 1st place. If NRC has to reconsider the same technical issues, why? Because they weren't done by the vendor with the future in mind, and they were done in haste without proper analysis — That's why. It isn't NRC that put the industry in this position. They put themselves in this position and now would like to throw the blame on the NRC to "be more efficient". Doesn't meet the reality of the history of the situation at all. Just what does "efficient" mean? To me, the term means, doing a good job, in the time needed, so that you don't have to do it all over again several times and waste time. NEI doesn't seem to understand that definition. It means, get the SAR's and draft proposals done "right", before you send them in to NRC. Follow the regulations in dry cask designs and procedures at the plants. This is where the industry has caused its own lack of time and money. Then they submit some schedule to

NRC demanding everything be "changed" to suit their "need" as of yesterday! Do it fast — now! We need those casks! (This is how it appears to us)

I don't see Congress in haste here when the "intent" was proposed. Dry cask was seen as a new way to store spent fuel. Congress endorsed that it should be studied. They didn't say — certify 100 designs as fast as possible, and eliminate as much oversight as you can, and leave everything up to vendors and utilities to change at will, and cut out the public as much as possible. I don't see that intent anyplace.

** I'd like to see this schedule of the cask vendors submitted to NRC that NEI says is "for a large number of amendments to its cask design to meet its customers needs." I think DOE, DOT, and NWTRB should see a copy of this schedule also. These groups should know why this is happening, and how it affects the total waste system (as we all well know, storage influences transport and disposal — spent fuel storage is the biggest concern right now, but it has long-term effects on every thing else that comes after it.)

You know, when you look at it all, in detail, it seems that, at 1st, we only had site-specific cask with the vendor and the utility working out the design for one place. A public hearing was part of that. Then that public hearing process was thrown out when generic rulemaking for designs, for use at any US site, became the mode. Now NEI wants to throw out

generic rulemaking, and in many ways go back to each plant making their own site-specific changes with use of 72.48, and amendment in Fed Reg — and cut out the public. Have we come full circle ?? I wonder.

Going back to reading the petition in the Fed. Register over again, that NEI has proposed here, I notice a real lack of clarity in the way it is presented in the Fed. Reg. in the 1st place. The heading says, "Proposed Rules". Then it says, "this section of the Federal Register contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules."

Now if this was clear, it would have the heading "Petitions for future proposed rules". That is clear. Then it would clarify that this petition is not a proposed rule, but only a request that NRC propose a rule in the future. It would make clear that that rule would be proposed in the future only if NRC decide to propose it in formal final form, and that, then, it would be up for public comment in a rulemaking procedure, which if accepted, would indeed then become final.

You really mislead the public, by putting a petition in a "proposed rule" section. It is a petition for a future proposed rule, not a proposed rule. You need a section headed "petitions" and need to clarify that a rule cannot be made

by acceptance of a petition proposal for a rule. Make this clear to the public reading the Fed. Reg. (After all, it appears the NEI wants everything based on these Fed. Reg. notices in the future. They ought to at least be clear in the Federal Register, so any member of the public can understand what he is really commenting on as far as procedures)

and the procedures to "amend" the Code of Regulations should be clearly explained here also. This is not a proposal to amend a rule as much as it is a proposal to "delete" part of the Code, isn't it?

The "traditional" notice and comment rulemaking is "not appropriate" for the cash list, infers NEI. If so, why didn't they object to it in the 1st place? What's wrong with this "traditional" procedure, that they want deleted, to replace it with a Fed. Reg. notice? Certainly a lot, and that needs to be clarified to the public so they can comment on the details of the actual proposal ramifications. The NEI says the "burden" outweighs the "benefit". I disagree. The benefits of public trust in NRC oversight, taking the time of staff to look at the details, is of grave importance. The benefit of enforcement that vendors, utilities, contractors and subcontractors do the right thing is of grave importance to the public and workers. The benefit of public documents and public input is of grave importance also.

Is the list of generic casks just to disappear? Is that the request? Are the hurdles for generic acceptance to be deleted? What are the details of everything to be eliminated here? How do we then know if cask designs meet criteria, or what casks are acceptable for generic use at our local utility? Are we coming to the point where haste and greed is driving the dry cask schedule to the point of a sort of "check list" the vendor and utility hand in to NRC and "promise" they have fulfilled, themselves? It's like your kid saying to you — "I've cleaned my room, and play baseball now — just don't check it, OK?" As a mother — I'd check it before I let my kid go out to play — common sense. Look at the room.

It is of interest that NEI states that NRC is considering an alternative process for current practice. Why wasn't the NRC alternative proposed to the public? What was this "alternative"? I'd really like to know. Sounds like NEI "headed you off at the pass" and did it for you — (which happens all too often!!) It's nice that they say they "support your effort". I'd guess they really replaced it with their own.

The petition NEI states that they have concluded that "the list of certified casks neither affords any additional authority on the CoC holder nor places additional weight on requirements that govern dry cask usage." If this is so, why was it done in the 1st place? Where were the objections by the industry? I would think that having the list in a rulemaking procedure certainly

does give it "more authority" and does "place more weight on requirements." I would say that when the NWPA says "effective" use of dry cask they meant effective in that cask designs were thoroughly evaluated, regulations enforced, and the public health and safety protected. This included ALARA for workers at the plants too.

Surely the industry, as well as vendors, were well aware — long ago about future burnup considerations. This is not a new thing really. If fuel exceeds max licensed burnup of casks — like the VSC-24 — whose fault is that actually? I'd say the vendors. Then the utilities. A lack of foresight is monumental in the industry. It's always — "do this now — will make changes and work out the problems later". It sure was with the VSC-24 — and a lot of other casks. The problems are rarely out! Also, the vendor ~~[illegible]~~ BPRAs would be a problem too — but left it to a future amendment instead of doing the analysis in the initial SAR proposal. (If homework is done before the test, better grades are received! Enough said.)

NEI infers that NRC is "wasting resources" on cask-specific rulemakings, and amendments do not involve many "new or novel" technical issues. This makes no sense. If there are no new issues, where are the resources wasted? Would it be better for the public and worker health and safety to put it all in the hands of NEI? I don't think so.

I also disagree that it is "illogical" to have different processes for different uses of casks for

storage and transport. As I understand it, as new transport designs are proposed in the future, these rules will have to be recalculated to probably be more like storage calculations. There is a lot of old material being used for transport evaluation, and new studies needed for the new transport design approvals. As far as I know, no dual (storage and transport) designs is in use, is it? Storage casks have been the "big push" as they are needed fast — transport designs are way behind, as they aren't needed as fast. Transport casks of the past 30 years are not what they soon will be, and many changes and studies are needed. The recent June 30, 2000 Sandia opinions show the need.

And, of course, we go back to the old argument about generic documents and changes made to them for site-specific use. That's where 72.48 got us into trouble when each utility ended up with different "versions" of the one, supposedly "generic", cask design. When it comes to unloading and monitoring a full cask array at each plant in the future, all these different versions of one cask design alone is a huge concern. But if we have many cask designs in a full cask array, each design with many different "versions", then what? The documents and problems lack any standardization and integration, then, and the competence of workers, especially with

so much worker staff changing all the time — will lead to confusion of so many different documents, lack of interchange between vendors and utilities of "lessons learned" etc. — everything we've seen already happen will get worse. One or two casks on a pad are not anything at all like a full cask array 30 years from now — each design with its own aging problem (and possible relicensing impossible) and unloading necessary. Standardization is necessary. Lets perfect the generic casks we have — not certify 100 more. Is anybody really looking at the future ramifications of these situations in the future at all?? Or is the hope to ship it all to Utah or Nevada, as soon as possible, and keep making more waste. Does nobody foresee full cask arrays and unloadings at the plant? And the problems with all these changes in the designs for site specific needs in the future? I worry about this.

NEI infers (in a letter to Mr. Brach of NRC on April 19, 2000) that it was "NRC's choice" to do a rulemaking on cask applications and amendments. Instead, they choose to imply (NEI I mean here) that NRC made a bad choice, and should go to Fed. Reg. notices instead of rulemaking. NEI states that what NRC did "has become" "inconsistent" with the intent of Congress. This I don't see at all, for Section 133 of NWPA directs the

commission to establish "BY RULE" — procedures for licensing any technology approved by Sect. 219(a) of the act. "BY RULE" means just that — a cask design should be approved by rulemaking. NEI infers that "NRC fullfilled its legislative obligation when it published its procedures for issuance of CoC's in Part 72." NEI seems to have pulled the number 10 out of a hat, and decided (in their footnote on p. 2 of the April 19th letter), "For example NRC has issued in excess of 10 CoCs under the provisions of Part 72. Thus NRC has demonstrated that the regulations are sufficient to certify technologies for use as provided by Congress in NWPA." Where in NWPA does it say certify 10 casks by rulemaking, and that's enough; then don't use rulemaking any more?? I sure don't see it any place. NEI says that what NRC has done here is "tant amount to shackling itself and the public" — (what???) — "with a process that wastes resources and mandates constant reconsideration of the same technical issue". I certainly disagree — NEI's problem is that they shackled themselves by going along with proposals of vendors for cheap casks, built in haste, without proper QA, and without full-blown proper analysis done before casks were built — way too often — the problems were not caused by NRC or the public. It is unfair for NEI to pass the buck here. The industry created its own problems. And in real life, that's what usually happens when

you try to cut corners and take the easy way out. Cheap materials, poor designs, lack of QA, etc. etc. lead to problem after problem, eating up time and money of NRC staff along the way. Also eating up a great deal of time and money of the public following their local dry cask storage issues too!! If I felt the VSC-24 was a good safe design to have at Pt. Beach in Wisconsin, where I live, do you think I'd take all this time to research this letter and write it this lovely August day? Surely not! I'd be doing something else surely.

Thank you for consideration of these public comments,

Fawn Shillinglaw

PS. The date of the letter of the petition is April 19, not 18 as in the Fed. Reg. (Or is there another letter than the one mentioned?).

*** I request a copy of the response to this petition and public comment, and I request a copy of any proposed rule based on this petition (along with the Fed. Reg. notice about it) please. I want to be informed on this issue, and I don't use a computer, nor do I read the Fed. Reg. every day. Any information on this petition is of great interest to the public. Please keep us informed. Thank you.

(cc CUB of Wisconsin – Citizens Utility Board)