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September 11, 2000

Ms. Annette L. Vietti-Cook  
Secretary  
Attention: Rulemakings and Adjudication's Staff  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**SUBJECT:** Comments in Support of Proposed Rule, "Interim Storage for Greater Than Class C Waste" (GTCC) (F.R. Vol. 65, Number 117, June 16, 2000)

Dear Ms. Vietti-Cook

This is a late submittal of comments on the subject proposed rule. Overall, I support the propose rule and its expeditious implementation.

I have reviewed the proposed rule along with courtesy copies of some of the comments submitted by others in support of the rule, yet I feel that a couple of items may have been overlooked. Therefore, I am motivated to submit the following comments for your kind consideration even though the comment period has officially closed.

1. The proposed rule to 72.6 extends the general license authorization for spent fuel storage in an ISFSI to reactor-related GTCC waste. Although reference is made in 72.6(c) to Subpart K, the title of Subpart K continues to refer only to spent fuel, as does the general license authorization of 72.210. I believe it would be beneficial to clarify Subpart K by:
  - a) Including reactor-related GTCC waste in the title of Subpart K.
  - b) Specifically including the authorization for reactor-related GTCC waste in 72.210.
2. 72.212(a)(1) currently states that the general license is limited to spent fuel. More specifically, 72.212(a)(2) states that "This general license is limited to storage of spent fuel in casks approved..." Consistent with the preceding comments, if the Commission considers that the general license authorization should apply to reactor-related GTCC waste, and if that consideration extends to storage within approved casks, then it would likely be of benefit to include "reactor-related GTCC waste" in 72.212(a)(1) and (2).
3. As a matter of administrative clarification and consistency, consideration should be given to including "reactor-related GTCC waste" in 72.212(b)(5)(ii).

4. A typo exists in the proposed rule under Sec 72.75(d)(2)(L). I believe this should be Sec 72.75(d)(2)(iii).
5. Paragraph 72.230(b) of the existing regulations authorizes storage of spent fuel in casks certified for transportation under Part 71. As with the above comments, consideration should be given to including reactor-related GTCC waste in this authorization.

More importantly, the paragraph raises questions over the term “cask” as it is used in this paragraph and in paragraph 72.121(a)(2). Reference is made to “casks that have been certified...under Part 71.” It should be noted that the term “cask” is not defined in Part 71, nor is it defined in the transportation regulations in 49 CFR.

The term “cask” is commonly used throughout the nuclear power industry to refer to one or more types of transport packaging, but it is also generally accepted that the correct term is “packaging” rather than “cask.” Spent fuel dry storage has extended the application of the term “cask,” yet it is not yet formally defined in the regulations in 10 CFR and 49 CFR.

It is noted that the proposed rulemaking recognizes this shortcoming and proposes a definition for the terms “spent fuel storage cask” and “cask.” Although the intent is good, the definition may raise more questions than it resolves:

*“...all the components and systems associated with the container in which spent fuel, other radioactive materials associated with spent fuel, or reactor-related GTCC waste are stored in an ISFSI.”*

The above definition focus on a “container” and not on a package or on the packaging. Taking this definition literally, a spent fuel cask includes any container in which GTCC waste is stored in an ISFSI.” Moreover, the term “container” is not defined in the regulations in 10 CFR or 49 CFR, resulting in a new definition which is based on an undefined term.

When all is said and done, it is desirable to know whether the term “cask” is a (1) a package, (2) packaging, or (3) something else. This is particularly important when referring to “casks that have been certified...under Part 71,” which would suggest a specific package or packaging.

Considerable efforts have been made to ensure consistency between 10 CFR and 49 CFR (and related IAEA regulations) over the past five years. Ideally, 10 CFR would avoid the use of any term related to transportation which would create an inconsistency with 49 CFR.

If "cask" is a new term meaning "packaging" – which sounds most likely – then the definition might simply state that a cask "means a packaging as defined in Part 71." If it is intended to include both the packaging and the waste, then the definition might state that a cask "means a package as defined in Part 71." As an alternative, Part 72 could be revised to eliminate the term "cask" and use either "package" or "packaging" as appropriate. Each of these approaches would retain consistency with 49 CFR.

However, if cask means something else, then the definition should attempt to reconcile the differences among a cask, packaging and package, and it should avoid the use of the undefined term "container." The final term should be reviewed by the DOT to ensure that they agree with its application to transportation and can be incorporated into the next revision of the applicable DOT regulations (most likely in Part 171.8).

Your kind attention to the preceding comments and the opportunity to provide them is sincerely appreciated. If you have questions concerning the comments, please contact me at (407) 207-8017.

Sincerely,



John J. Kelly  
President

TO WHOM IT MAY CONCERN:

**Brief Background on ERS International, Inc.**

ERS International, Inc., is a consulting firm for nuclear low level and intermediate level waste management and economics. Included among its domestic and international clients are the Electric Power Research Institute, Nuclear Energy Institute, DOE, IAEA, and more than fifty commercial nuclear stations in the US and Canada.

Although ERS is a very small consulting firm, we have provided services to the nuclear industry for more than twelve years. John Kelly -- the president of ERS and the individual who provided the comments to the proposed rulemaking for 10 CFR Part 72 -- is recognized as one of the foremost experts in the world on LLW management, conditioning and economics.