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FROM: DUE: / /

EDO CONTROL: G20000517  
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FINAL REPLY:

Randall Speck  
Kaye, Scholer, Fierman, Hays  
& Handler, LLP

TO:

David Meyer, ADM

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO: 00-0666

DESC:

Request to Stay the Effectiveness of Amendment to  
10 CFR 72.214

ROUTING:

Travers  
Paperiello  
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DATE: 11/03/00

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Kane

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.

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**ACTION OFFICE:** EDO

**AUTHOR:** RANDALL SPECK  
**AFFILIATION:** DC  
**ADDRESSEE:** DAVID MEYER  
**SUBJECT:** REQUEST TO STAY THE EFFECTIVENESS OF AMENDMENT TO 10 CFR 72.214

**ACTION:** Appropriate  
**DISTRIBUTION:**

**LETTER DATE:** 11/01/2000  
**ACKNOWLEDGED:** No  
**SPECIAL HANDLING:**

**NOTES:** EDO/OGC FOR APPROPRIATE  
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EDO --G20000517

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November 1, 2000

**BY HAND AND TELECOPIER**

David L. Meyer  
Chief, Rules and Directives Branch  
Office of Administration  
U.S. Nuclear Regulatory Commission  
One White Flint North  
Rockville, MD

Re: Request to Stay the Effectiveness of Amendment to 10 CFR §  
72.214

Dear Mr. Meyer:

On behalf of my client, the State of Maine (the "State"), I request that the Nuclear Regulatory Commission ("NRC") stay the effective date of its amendment to 10 CFR § 72.214 adding the NAC Universal Storage System ("NAC-UMS") to the list of approved spent fuel storage casks. See 65 Fed. Reg. 62581 (October 19, 2000). The rule is currently set to become effective on November 20, 2000. The State is considering whether to seek review of this NRC rulemaking, but Maine Yankee intends to begin loading its spent fuel into the NAC-UMS casks relatively soon. In order to obtain a timely review of the Commission's rule, the State asks that its effectiveness be stayed until December 19, 2000 (the date by which a review petition will have to be filed) or until all appellate review is complete, whichever is later.

The State made a number of comments on the proposed rule, including a request "that, as a prerequisite to approving the proposed rule, the NRC acquire binding assurances from the DOE that DOE will accept spent fuel for transport and disposal that has been stored in accordance with NRC-approved procedures." The State is concerned that unless DOE agrees now that the NAC-UMS canisters will preserve the spent fuel intact and in an acceptable condition for transport and disposal for the decades of storage that will be necessary before DOE finally removes it, the canisters may have to be unsealed and inspected before any fuel can move. Not only would this procedure be costly and time consuming, but it may expose workers and State employees to unnecessary radiation dose.

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The NRC did not even request DOE review of the NAC-UMS system design -- much less a commitment from DOE to accept fuel stored in that system -- "[b]ecause the DOE's spent fuel acceptance criteria for ultimate disposal has [sic] not yet been formalized [and, therefore,] it would not be practical to preclude a storage approval on this basis at this time." This response did not address the State's comment. The existence of acceptance criteria for ultimate disposal is irrelevant to whether DOE can determine if it will accept stored spent fuel for *transport* without first opening and inspecting the fuel. The NAC-UMS system does not purport to provide a canister that could be used for ultimate disposal. Rather, that system assumes that the spent fuel assemblies will have to be removed from their transport canisters in a specially designed facility at the permanent disposal site. The basic premise of the NAC-UMS system, however, is that there will be no need to expose workers and the environment to the highly radioactive spent fuel at the time when DOE arrives at the reactor site to begin accepting the spent fuel. The storage canister is the same as the transport canister, and it can simply be transferred from the storage cask to the transport cask without exposing workers to avoidable risks.

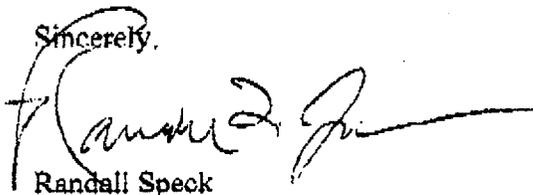
By failing to take the reasonable step of soliciting DOE design review and approval, the NRC rule jeopardizes the fundamental safety and efficiency principle that underlies the NAC-UMS concept. Before accepting spent fuel for transport, DOE will be free to second-guess the NRC's determinations and demand that storage/transport canisters be opened and inspected to determine whether there has been any deterioration in the fuel's condition over the decades of storage. Indeed, DOE warned in its letter to Governor King (cited in the NRC's response) that it may delay accepting spent fuel if there are questions about its condition that require DOE "to address any technical issues that may be related to the fuel's safe handling and disposal." The longer that DOE delays in fulfilling its obligation to remove spent fuel, the more likely DOE will be to demand additional investigations. It is unreasonable for the NRC to refuse to involve DOE at this stage when DOE's design input now could avoid serious health and safety consequences in the future.

A stay of the effectiveness of the rule will permit a thorough review of this health and safety issue and is, therefore, in the public interest. The relatively small potential economic consequences of a delay in loading Maine Yankee's spent nuclear fuel cannot outweigh the potential health and safety consequences of the failure to obtain DOE's commitment to accept fuel "as is" in NAC-UMS canisters.

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Unless the NRC grants a stay by November 10, 2000, the State will have no choice but to petition the Court of Appeals to review the rule and to stay its effectiveness pending completion of that review. Please advise me as soon as possible but no later than November 10, 2000, whether the NRC will grant the State's request for a stay.

Sincerely,

A handwritten signature in black ink, appearing to read "Randall Speck", with a long horizontal flourish extending to the right.

Randall Speck

cc: Michael Misner  
Maine Yankee