

STATE OF SOUTH CAROLINA
State Budget and Control Board
DIVISION OF INSURANCE AND GRANTS SERVICES

MARK SANFORD, CHAIRMAN
GOVERNOR

GRADY L. PATTERSON, JR.
STATE TREASURER

RICHARD ECKSTROM
COMPTROLLER GENERAL



HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE
ROBERT W. HARRELL, JR.
CHAIRMAN, WAYS AND MEANS COMMITTEE
FRANK W. FUSCO
EXECUTIVE DIRECTOR

SOUTH CAROLINA ENERGY OFFICE
1201 MAIN STREET, SUITE 1010
COLUMBIA, SOUTH CAROLINA 29201
(803) 737-8030 Toll-free 1-800-851-8899
Fax (803) 737-9846

February 14, 2003

Mr. Christopher McKenney
Mail Stop T-7J8
Environmental and Enforcement Branch
Division of Waste Management
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Dear Mr. McKenney:

These comments on the Draft Safety Analysis Report as it pertains to possible disposal of two spent nuclear fuel rods from Millstone Unit 1 are provided in response to your solicitation of January 6, 2003 (68 Federal Register 589). The South Carolina Budget and Control Board is the agency of state government that is responsible for custodianship of state properties, which includes the Barnwell site. In this capacity, the Budget and Control Board will be responsible for carrying out institutional control activities at the disposal site as contemplated in federal and state regulations.

I believe it is fair to conclude from the Special Inspection Report by the Nuclear Regulatory Commission, Region I (05000245/2001013, February 26, 2002) that the missing fuel rods are "most likely" buried at the Barnwell facility. The most likely shipment was a 1988 shipment to Barnwell, although shipments to Barnwell in 1990 and 1992 could also have contained some or all of the fuel segments. The Special Inspection Report does not conclude absolutely that the fuel rods are buried at Barnwell. But unless additional information to the contrary comes to light, my program has no choice but to proceed with planning for institutional control on the assumption that they *are* buried there.

Federal regulations promulgated over a four year period between 1978 and 1982 establish that radioactive waste exceeding Class C limits is generally unsuitable for near-surface disposal in facilities like the Barnwell site. This proscription has been well-known doctrine for 25 years and is backed up by draft and final environmental impact statements, and other technical documents. The missing Millstone fuel rods exceed Class C limits by a substantial margin, and therefore must be presumed to be unsuitable for near-surface disposal.

The draft SAR does not even allude to the obvious contradiction between its conclusion and the general regulatory prohibition of waste exceeding Class C limits. According to the SAR:

“The NRC has determined, from these analyses, that the potential presence of the two fuel rods, at either site (Barnwell or the Hanford Washington site), would not constitute a present or future risk to public health and safety or the environment.”

In the absence of any explanation in the SAR for the contradiction, the reader must draw an inference similar to the following: *The acceptance of an appreciable quantity of waste that exceeds Class C limits would most likely affect public health and safety and the environment, but burying small amounts of such waste once in a while has little impact because an inadvertent intruder would have only a small chance of encountering the prohibited material.*

While there may be some statistical logic for such a position, it is nevertheless disconcerting, coming from the federal government's chief regulatory agency for radioactive materials. Using this rationale, a violator of waste acceptance criteria (WAC) need only show, after the fact, that his particular transgression, by itself, was not sufficient to cause the disposal facility to fail to meet performance objectives. However, it should be obvious that the consequence of forgiving single transgressions is to invite repeat offenses, as long as no single event can be singled out as the one that triggers site failure. If an SAR of this type is to be used by a host state as justification for disregarding likely violations of the WAC – as parties to this matter have suggested to me that it should – then generally applicable standards would become irrelevant, published WAC would serve no practical purpose, and shippers would need to accompany each waste container with a waste-specific performance analysis.

It is, of course, easier for an agency to conclude that disposal of spent nuclear fuel at a near-surface disposal facility has no impacts if that agency bears no financial responsibility for the consequences of its decision. I would be more inclined to factor the NRC conclusion into my own recommendations if the agency would underwrite its conclusion with financial guarantees. At the minimum, the NRC should provide binding guarantees that the presence of spent fuel at the Barnwell site would in no way affect the analysis of the financial resources that would be needed for extended care in the event South Carolina were to seek transfer of the site to the Federal government some day under section 151 of the Nuclear Waste Policy Act of 1982.

In preparation of the final SAR, I would respectfully request that the NRC do the following:

- Reconcile the conclusions in the SAR with the regulatory history of 10 CFR Part 61 and the waste classification tables, so that readers of the document can understand the apparent contradiction and put the SAR into its proper perspective;
- Reiterate for the benefit of agreement states and other parties the NRC's position on the need for strict compliance with waste acceptance criteria that have been promulgated through applicable federal or state rulemakings or license proceedings;

- Clarify whether or not the NRC intended for the draft SAR to provide Millstone a defense against any claims by the host state for compensation for the likely burial of unauthorized material at the Barnwell facility;
- Add appropriate qualifications or caveats to the "no impact" conclusion. The report, after all, provides little more than the mathematical outcome of a computer run based on an exposure scenario selected by the modeler. It is over-reaching to arrive at such a categorical conclusion from work that is this limited in scope.

Thank you for your attention to these comments. As the manager of the program responsible for custodial care of the Barnwell site after closure, I will continue to urge the NRC staff to communicate and consult with us regarding any actions it may take that might affect our plans.

Sincerely,



William Newberry

Director

Radioactive Waste Disposal Program