

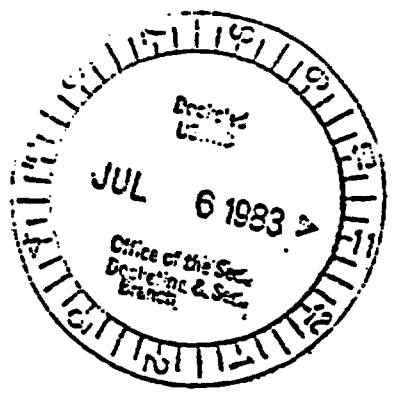
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(48 FR 22730)

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July 6, 1983



Samuel Chilk, Secretary  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

Attention: Docketing and Service Branch

Dear Mr. Chilk:

I have enclosed the comments of the Union of Concerned Scientists on the Commission's proposed rule concerning requirements for licensee actions regarding the disposition of spent fuel upon expiration of reactor operating licenses, 48 Fed. Reg. 22,730. Although the formal deadline was yesterday, I trust the Commission will consider these comments in its deliberations since they are being hand delivered this morning.

Sincerely,

William S. Jordan, III

WSJ/cpk  
Enclosure

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PDR WASTE  
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DRAFT

Comments of the Union of Concerned Scientists  
On Requirements for Licensee Actions Regarding  
the Disposition of Spent Fuel Upon Expiration  
Of Reactor Operating Licenses (48 Fed. Reg. 22730)

Introduction

On May 20, 1983, the Nuclear Regulatory Commission published in the Federal Register a proposed rule that would govern licensee actions with respect to spent fuel storage or disposal after reactor operating licenses expire. 48 Fed. Reg. 22730. The rule would accomplish the following:

1. Section 50.54(x) would require licensees to submit a plan for post-license spent fuel management to the Commission at least five years before expiration of the reactor operating license.
2. Section 51.5(e) would eliminate any Commission consideration of the environmental impacts of on-site storage of spent fuel for the period following expiration of the reactor license, regardless of how long that period may be.

The proposed rule purports to be based upon the results of the recently concluded "Waste Confidence" proceeding.

For the reasons stated below, the first provision, concerning a spent fuel management plan, is a step in the right direction, but in light of the sorry history of utility failure to take responsibility for radioactive wastes, it is grossly inadequate. The second provision flatly violates the National Environmental Policy Act. The Union of Concerned Scientists urges the Commission (1) to strengthen the first provision to assure that utilities immediately are required to take full responsibility for spent fuel management, and (2) to withdraw the second provision, and instead undertake NEPA analysis of the environmental effects of indefinite on-site storage for all new construction permits, operating licenses, and storage facilities, either generically or through individual proceedings.

Proposed Section 50.54(x)

At long last, the Commission has officially recognized that spent nuclear fuel may remain at reactor sites for 30 years after the expiration of operating licenses. Although it never

says so explicitly, the Commission's statements in the proposed rule also establish that it expects and probably will allow some spent fuel to remain at reactor sites even after the end of the 30-year period. This is the only reasonable conclusion that can be reached from the Commission's statement that "there is no reasonable probability that spent fuel will unavoidably remain at a reactor site at the end of that 30-year period." 48 Fed. Reg. 22730 (emphasis supplied). If the Commission had an expectation that the fuel would actually leave the site after 30 years, surely it would say so, rather than simply suggesting that it will be possible for the fuel to leave the site at that time.

The Commission's apparent willingness to permit the development of semi-permanent storage facilities at reactor sites is and always has been deeply disturbing. This concern is by no means alleviated by the proposed § 50.54(x). Although it purports to establish a new requirement under which utilities will be required to take responsible action, it does no such thing. The proposal would simply require the submission of a management plan five years before the expiration of reactor operating licenses. By that time, it will be too late. The utility will have a massive inventory of spent fuel; it will face financial difficulties as a result of the loss of its reactor from the rate base and of the cost of spent fuel management; and it will be seeking to minimize its further activities with respect to the particular reactor as it concentrates on its newer and more long-term generating facilities. As a result, the utility cannot be expected to develop a strong, comprehensive plan at that late stage in the game.

UCS urges the Commission to require all utilities to develop and commit funding to comprehensive spent fuel management plans within six months after the issuance of this rule, or, in the case of new reactors, as a condition of receipt of an operating license. Through this mechanism, utilities will be forced to take a broader, more long-range view, and they are more likely to develop a sound plan that is fully integrated into their corporate operations, rather than to view the requirement as an irritating nuisance that they must handle to continue operating to the end of reactor life. This will also assure that utilities will take into account the full costs of their nuclear program, and they will tend to plan towards a long-term disposal solution, rather than towards the sort of short-term storage solution that will probably be the only option if they have only five years to address the problem. The overall result would be an industry far more aware of its exact disposal needs, and a far greater likelihood that a repository will be in place when it is needed, and that utilities will be prepared to use it.

UCS agrees with the Separate Views of Commissioner Gilinsky that existing and new licensees should be required to demonstrate the feasibility of safe long-term on-site storage as a condition of receipt or continuation of operating licenses. 48 Fed. Reg. 22733. We believe, however, that Commissioner Gilinsky's "no impediment" formulation of the issue is not strong enough. If a utility is to be granted the privilege and responsibility of operating a nuclear reactor, it should at least be required to show not simply that there will be no impediment to safe long-term on-site storage, but that long-term on-site storage will, in fact, be safe, and that the utility is fully prepared and adequately funded to implement it.

Proposed Section 51.5(e)

Proposed § 51.5(e)(2) would eliminate any consideration of the "environmental consequences of spent fuel storage in reactor facility storage pools or independent spent fuel storage installations" for the period following expiration of reactor operating licenses. 48 Fed. Reg. 22733. According to proposed § 51.5(e)(1), this rule is based upon the following Commission findings:

1. That no significant environmental impacts will result from the storage of spent fuel for 30 or more years beyond operating license expiration.
2. That there is reasonable assurance that one or more mined geologic repositories will be available by the years 2007-09.
3. That there will be sufficient repository capacity within 30 years of the expiration of any operating license such that the spent fuel could be disposed of within that time.

The preamble to the proposal establishes that

The rule relies on the Commission's generic determination in the Waste Confidence proceeding that the licensed storage of spent fuel for 30 years beyond the reactor operating license expiration either at or away from the reactor site is feasible, safe, and would not result in a significant impact on the environment.

48 Fed. Reg. 22731. As far as it is possible to determine from the preamble, the proposal depends entirely upon the result of the Waste Confidence proceeding. Although the proposal refers as well to "NRC's experience in more than 80 individual safety

and environmental evaluations conducted in storage licensing proceedings," Id., these would not support findings with respect to spent fuel storage beyond the period of the operating license since all such individual proceedings have consistently been limited to the period of the license applied for. 44 Fed. Reg. 61373, 48 Fed. Reg. 22730. Thus, the substantive validity of the proposed rule depends entirely upon the Waste Confidence proceeding. Similarly, the procedural validity of this proposal depends upon whether it and the Waste Confidence proceeding, taken together, comply with the requirements of the National Environmental Policy Act, as implemented in the Commission's regulations. The proposal fails on both counts.

1. Substantive Invalidity and Misapplication of NEPA

The substance of the proposal is invalid because it depends upon a Waste Confidence finding that is, in turn, invalid. This proposal stands or falls with the Commission's fourth finding in the Waste Confidence proceeding, to the effect that on-site or independent spent fuel storage for at least 30 years after license expiration will have no significant environmental effects. Rulemaking on the Storage and Disposal of Nuclear Waste (Waste Confidence Rulemaking), 44 FR 61372 (filed May 16, 1983), Sl. op. at 6.

This is an improper finding in the context of the Waste Confidence proceeding. According to the Notice of Proposed Rulemaking that initiated the Waste Confidence proceeding, its purpose was

solely to assess generically the degree of assurance now available that radioactive waste can be safely disposed of, to determine when such disposal or off-site storage will be available, and to determine whether radioactive wastes can be safely stored on-site past the expiration of existing facility licenses until off-site disposal or storage is available.

44 Fed. Reg. 61373. Nowhere did the Commission state that it intended to reach any conclusions as to the environmental effects of on-site storage beyond the expiration of operating

licenses. That simply was not part of the proposal.<sup>1/</sup> As a result, members of the public commented on the narrow issue of whether and when wastes could be safely disposed of and did not address the environmental consequences of indefinite storage, although many public commenters have long been deeply involved in such issues and undoubtedly would have addressed them had they been identified as aspects of the rulemaking proceeding. See, e.g., Statements of Position of the Natural Resources Defense Council and the New England Coalition on Nuclear Pollution, filed in the Waste Confidence proceeding. Thus, the Waste Confidence proceeding cannot serve as a generic proceeding on the environmental effects of indefinite on-site storage.

Moreover, the legitimate Commission findings in the Waste Confidence proceeding, as stated in the preamble to this proposal, establish that the Commission must comply with NEPA's environmental review requirements with respect to the indefinite on-site storage of spent fuel, both for the 30 years following license expiration, and beyond. The Commission now admits that "there is . . . a probability that some onsite spent fuel storage after license expiration may be necessary or appropriate," and that "some spent fuel may be stored in existing or new storage installations for some period beyond 2007-09." 48 Fed. Reg. 22731. The Commission apparently does not dispute that, given such a probability, it must examine the environmental consequences of such storage. Rather, it relies upon its Waste Confidence finding as meeting that requirement. As discussed above, it does not.

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<sup>1/</sup> In explaining the possible outcomes of the Waste Confidence proceeding, the Commission stated that if it found a reasonable assurance that wastes would be safely disposed of or stored off-site before the expiration of operating licenses, it would promulgate a rule precluding consideration in licensing hearings of the environmental effects of post license on-site storage. *Id.* This is the only reference to environmental effects. This approach might well have been valid had the Commission reached that conclusion. However, it reached exactly the opposite conclusion - that post-license on-site storage probably would be required, perhaps even after the years 2007-09. Thus, the Commission's discussion gave no indication that it would undertake an evaluation of the environmental effects of continued on-site storage.

With respect to the period beyond 30 years after license expiration, the Commission relies upon its finding of reasonable assurance that adequate disposal capacity will be available and reasons that

Thus, there is no reasonable probability that storage will be unavoidable past the 30-year period in which the Commission had determined that storage impacts will be insignificant.

Id. Apparently the Commission believes that it need not consider the environmental impacts of its actions as long as those impacts are simply avoidable.

That is not the standard for compliance with NEPA. The question is not whether environmental effects are avoidable, but whether they are reasonably foreseeable. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 538-39 (1978). To couch that test in terms of avoidability is to turn NEPA on its head. Virtually all environmental effects are avoidable as long as a given action is not taken. For example, the environmental effects of the liquid metal fast breeder reactor program were all avoidable as long as the program never went beyond the research stage. but the court required an EIS because, although avoidable, the effects were reasonably foreseeable. Scientists' Institute for Public Information, Inc. v. Atomic Energy Commission, 481 F.2d 1079, 1092 (D.C. Cir. 1973). The same principle applies here. The Commission has not found that indefinite on-site storage well beyond 30 years after license expiration is not reasonably foreseeable as a matter of fact, and it has established no firm requirements that would prohibit such long-term storage.

Accordingly, when it licenses new storage facilities, either at new or existing reactor sites or away from reactors the Commission must at a minimum examine the environmental consequences of indefinite on-site storage of spent nuclear fuel.<sup>2/</sup> It may be able to do this on a generic basis,

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<sup>2/</sup> The licensing of such new facilities is distinct from extended storage license amendments for existing facilities, which was the issue raised by the State of Minnesota v. NRC, 602 F.2d 412 (1979). With respect to existing facilities, there is a threshold question of whether the proposed extension is a new major federal action significantly affecting the human environment. If so, the "reasonably foreseeable" test would apply there as well. With respect to new facilities, the same threshold question exists, but there is no dispute that it would be answered in the affirmative; so that the "reasonable foreseeable" test will always apply.

although Commissioner Gilinsky's assertion that "each power reactor site will have to be examined in detail." 48 Fed. Reg. 22733, indicates that case-by-case consideration would be more appropriate. This is a question of fact that we leave to a later time.

## 2. Procedural Invalidity

The proposed rule is invalid not only because it has no substantive support in the underlying Waste Confidence proceeding, but also because neither the proposal nor the Waste Confidence proceeding complied with the requirements of NEPA and the Commission's regulations. Under 10 C.F.R. Part 51, the Commission must either prepare a Draft Environmental Statement, followed by a Final Environmental Statement, or it must prepare a Negative Declaration accompanied by an Environmental Impact Appraisal. It has done none of these with respect to what it now acknowledges to be a reasonable probability that spent fuel will remain at reactor sites even beyond 30 years after license expiration.

The closest the Commission has come to addressing these issues is its discussion of its conclusion that there will be no significant radiological release, coupled with its statement that

There are no significant additional non-radiological consequences which could adversely affect the environment for storage past the expiration of operating licenses at reactors and independent spent fuel storage installations.

48 Fed. Reg. 22731. Even that statement, for which the Commission cites absolutely no support, is irrelevant to NEPA's requirements: The question is not whether the environment will be favorable for storage, but whether the human environment will be adversely affected through radiological or non-radiological impacts of indefinite on-site storage. NEPA requires the Commission to address this issue.

## Conclusion

For the reasons stated above, the Union of Concerned Scientists urges that the Commission:

1. Significantly strengthen proposed §50.54(x) as discussed in the body of this comment.
2. Withdraw proposed § 51.1(e).



3. Promulgate a rule requiring that the environmental consequences of indefinite on-site storage (for a period well beyond 30 years after license expiration) must be considered in all proceedings for the issuance of a new license for a nuclear reactor, a new reactor-site storage facility, or a new off-site storage facility.

Respectfully submitted,



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For the Union of Concerned  
Scientists

Dated: July 6, 1983

## NUCLEAR REGULATORY COMMISSION

10 CFR Parts 50 and 51

### Opening of Comment Period on Reopened Proposed Rule

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Reopening of comment period.

**SUMMARY:** In response to public comments, the Commission has decided to reopen the comment period on its fourth finding in its Waste Confidence decision and on an associated proposed amendment to 10 CFR Parts 50 and 51. The fourth finding states:

*"The Commission finds reasonable assurance that, if necessary, spent fuel can be stored safely and without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations."*

This finding was based in part on the Commission's determination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating power reactor licenses.

Biological consequences were addressed more specifically in other findings.

Comments are to be limited to 20 pages and are to address only the significance of environmental impacts of extended spent fuel storage, since safety matters in the Commission's decision have already been commented on by participants in this proceeding.

**DATES:** Comments should be filed with the Commission's Secretary not later than December 6, 1983. Comment received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

**ADDRESSES:** Send comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attn: Docketing and Service Branch. Hand-deliver comment to: Room 1121, 1717 H Street NW., Washington, DC, between 8:15 a.m. and 5:00 p.m. Examine comments received at: the NRC Public Document Room 1717 H Street NW., Washington, DC

**FOR FURTHER INFORMATION CONTACT:** Dennis Rathbun or Clyde Jupiter, Office of Policy Evaluation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (202) 634-3295

Sheldon L. Trubstch, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, (202) 634-3224

**SUPPLEMENTARY INFORMATION:** Since October 1979 the Nuclear Regulatory Commission ("NRC" or "Commission") has been conducting a generic rulemaking proceeding known as the "Waste Confidence" proceeding (44 FR 61372, October 25, 1979). On May 16, 1983 the Commission issued a proposed decision in that proceeding. The Commission made five findings on the feasibility of disposal of high-level radioactive waste and spent fuel, the timeliness of availability of disposal capacity and the safety and environmental impacts of the storage of spent fuel for up to thirty years after the expiration of reactor operating licenses. The Commission's request for comments by participants was limited to two issues: (1) Implications of the Nuclear Waste Policy Act of 1982 for the Commission's decision, and (2) the Commission's discussion of the safety of dry storage of spent nuclear fuel.

In a companion action, on May 20, 1983, 48 FR 22730, the Commission proposed an amendment to its NEPA rules in the 10 CFR Part 51 rule regarding the consideration of environmental impacts of the extended storage of spent fuel beyond the licensed operating period of a nuclear power reactor or independent spent fuel storage installation. The Commission found that extended storage for up to thirty years after the expiration of operating licenses at nuclear power plants or at independent spent fuel storage installations will result in no significant safety or environmental impacts. This finding was based on the record of the Waste Confidence proceeding and the NRC's experience with more than eighty individual safety and environmental evaluations conducted in storage licensing proceedings.

In particular, the Commission found that significant release of radioactivity from spent fuel under licensed storage conditions is highly unlikely because of the resistance of spent fuel cladding to corrosive mechanisms, the benign character of the storage system, the ease of maintenance and the absence of conditions that would provide a driving force for disposal of radioactive material. The Commission also found that the non-radiological environmental impacts from spent fuel storage are insignificant. With the possible exception of impacts associated with the site preparation and storage facility construction there are no other

significant non-radiological consequences which could adversely affect the environment as a result of storage past the expiration of operating licenses at reactors or at independent spent fuel storage installations.

Some participants in the Waste Confidence proceeding commented that there had been no notice of the Commission's intent to make this environmental finding. Because that finding supports the proposed amendment to Part 51 of the Commission's rules, some of those who commented on the proposed rule contended that they had an inadequate opportunity to comment on the basis of the proposed rule.

The Commission has decided to provide the public an opportunity to comment on: (1) The environmental aspects of its fourth finding—that it has reasonable assurance that, if necessary, spent fuel can be stored without significant environmental effects for at least 30 years beyond the expiration of reactor operating licenses at reactor spent fuel storage basins, or at either onsite or offsite independent spent fuel storage installations; (2) the determination that there are no significant non-radiological consequences which could adversely affect the environment if spent fuel is stored beyond the expiration of operating licenses either at reactors or at independent spent fuel storage installations; and (3) implications of comments on items (1) and (2) above for the proposed amendment to 10 CFR Part 51.

Comments on the Commission's finding and supporting determination should include a detailed discussion of any environmental impacts associated with the extended storage of spent fuel and should explain how, in the commenter's view, consideration of those impacts should modify the Commission's decision.

Dated at Washington, DC, this 31st day of October 1983.

For the Nuclear Regulatory Commission,  
Samuel J. Chilk,  
Secretary of the Commission.

(FR Doc. 83-25007 Filed 11-3-83; 8:45 am)  
BILLING CODE 7890-01-M

## FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Semiannual Agenda of Regulations

**AGENCY:** Federal Deposit Insurance Corporation.