

June 1, 2005

The Honorable Jay Inslee  
United States House of Representatives  
Washington, D.C. 20515

Dear Congressman Inslee:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letters of March 23, 2005, and April 19, 2005, in which you expressed concerns about an application by Connecticut Yankee Atomic Power Company (CYAPCO), to NRC, on disposal of radioactive demolition debris from the decommissioning of CYAPCO's Haddam Neck plant. You requested that NRC consider the CYAPCO application as part of its rulemaking governing disposition of solid material and that the public be afforded appropriate opportunities for engagement in the decision regarding the application.

The general requirements for waste disposal are set forth in 10 CFR Part 20, Subpart K. Section 20.2002 states that a "...licensee or applicant for a license may apply to the Commission for approval of proposed procedures, not otherwise authorized in the regulations in this chapter, to dispose of licensed material generated in the licensee's activities." CYAPCO requested an authorization to use alternate disposal procedures consistent with the language of 10 CFR 20.2002. Specifically, CYAPCO requested authorization to exempt the slightly contaminated material from further Atomic Energy Act (AEA) and NRC licensing requirements and to dispose of the material at an Environmental Protection Agency, Subtitle C, Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility. In reviewing this request, the NRC staff ensured that any potential dose from the disposal would be maintained within the dose limits set forth in Part 20, "Standards for Protection against Radiation," and be as low as is reasonably achievable. The staff also evaluated the proposal to ensure it would not cause a significant environmental impact.

The demolition debris that CYAPCO has requested to dispose of is characterized as byproduct or special nuclear material. The regulatory treatment of byproduct material is governed by 10 CFR Part 30, "Rules of General Applicability to Domestic Licensing of Byproduct Material." Section 30.11 implements NRC's authority to issue specific exemptions from the licensing and regulatory requirements, upon determining that the exemptions "...are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest." Similarly, 10 CFR 70.17 implements NRC's authority to issue specific exemptions under 10 CFR Part 70, "Domestic Licensing of Special Nuclear Material." As part of a review of a request for off-site disposal at a non-NRC-licensed facility, under 10 CFR 20.2002, NRC ensures that applicable safety and environmental analyses demonstrate compliance with 10 CFR 30.11 and 70.17, and 10 CFR Part 51, before exempting the material to be disposed of from further NRC licensing and regulatory requirements.

Your March 23, 2005 letter recommends that the NRC should engage the public in the decision regarding the CYAPCO request. In this case CYAPCO's 10 CFR 20.2002 request seeks an exemption from NRC regulations in conjunction with a request to use the alternative disposal procedures provided for in 10 CFR 20.2002, not a change in its license. In NRC practice, such requests do not ordinarily call for public hearing. See *Cleveland Electric Illuminating Co., et. al.* (Perry Nuclear Power Plant, Unit 1), CLI-96-13, 44 NRC 315, 326-329 (1996); *Commonwealth Edison Co.* (Zion Nuclear Power Station), CLI-00-5, 51 NRC 90, 94-98 (2000).

However, we note that as part of the staff review process, the NRC provided the States of Idaho and Connecticut an opportunity to comment on a draft of the environmental assessment prepared by the staff in response to the CYAPCO request. Comments received from both the States of Idaho and Connecticut were taken into consideration in the development of the environmental assessment. In response to your letter, the NRC staff also contacted the States of Washington and Massachusetts to ensure they were aware of the status of this request. The NRC will continue to evaluate the procedures in place to ensure effective communication on implementation of this section of the regulations in an open and transparent manner.

The NRC staff published an Environmental Assessment and Finding of No Significant Impact in the *Federal Register* on April 18, 2005. Based on these findings, the NRC staff granted the exemption request on April 19, 2005.

You urged that the site specific CYAPCO request be included as part of the proposed rule on controlling the disposition of solid material, which was made available to the public along with the associated draft Generic Environmental Impact Study (GEIS) (NUREG-1812) on April 19, 2005. The CYAPCO request is a site-specific request, covered under 10 CFR 20.2002. The proposed rule is generic, in that it covers release of solid material from any NRC-licensed site, and is separate from determinations made by the NRC under 10 CFR 20.2002.

As part of its information-gathering for the proposed rule, however, the NRC has actively sought stakeholder participation and input on alternate disposition approaches, as recommended by the National Academy of Sciences (NAS). This included release of several documents, including an NRC Issues Paper issued in June 1999, and a scoping *Federal Register* document and a web-based Information Packet, issued in February 2003, both of which invited written and/or electronic comment from stakeholders on the issues. Twelve public meetings on this topic were conducted between September 1999 and February 2005, with stakeholders, including three meetings NAS convened as part of its study of this subject. In addition to input at the 12 public meetings, NRC has also received nearly 3500 letters and e-mails, which presented a diverse set of views from the aforementioned range of stakeholder groups.

In your letter of April 19, 2005, you specifically requested that NRC consider a legal argument, presented by a public advocacy group, that NRC cannot grant the CYAPCO's 20.2002 exemption without a final programmatic environmental impact statement under the National Environmental Policy Act (NEPA). Specifically, the argument stated that "The NRC may not "piecemeal" this decision and allow individual disposal decisions to proceed when they

are part and parcel of a larger programmatic decision requiring a programmatic EIS.” As previously stated, the CYAPCO request is a site-specific request, covered under 10 CFR 20.2002 and is separate from any determination would be made under the proposed rule. Therefore, even if the proposed rule were in effect, the CYAPCO proposal would be outside the scope of the proposed rule and would still require approval under 20.2002, including an environmental assessment of the proposed action. The Commission takes its NEPA responsibilities very seriously and believes that its environmental reviews for 10 CFR 20.2002 reviews are appropriate and comply with both the requirements and spirit of NEPA. The GEIS for the proposed rulemaking fully evaluates the potential impacts from implementation of the rule, and thus does not segment the NEPA process.

The Commission, however, has decided to defer this rulemaking for the time being. The Commission’s decision, as stated in the Staff Requirements Memorandum of June 1, 2005, is based on the fact that the agency is currently faced with several high priority and complex tasks, that the current approach to review specific cases on an individual basis is fully protective of public health and safety, and that the immediate need for this rule has changed due to the shift in timing for reactor decommissioning.

The Commission recognizes your interest in this matter and appreciates your comments.

Sincerely,

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Nils J. Diaz