

EDO Principal Correspondence Control

FROM: DUE: / /

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FINAL REPLY:

Gerald Pollet  
Heart of America Northwest

TO:

Chairman Diaz

FOR SIGNATURE OF :

\*\* GRN \*\*

CRC NO: 05-0220

DESC:

Connecticut Yankee Powre Co.'s Request for  
Approval to Dispose of Radioactive Waste from  
Haddam Neck Nuclear Plant at an Unlicensed  
Waste Site in Idaho

ROUTING:

Reyes  
Virgilio  
Kane  
Merschhoff  
Silber  
Dean  
Burns/Cyr  
Collins, RI  
Mallett, RIV

DATE: 04/21/05

ASSIGNED TO:

CONTACT:

NMSS

Strosnider

SPECIAL INSTRUCTIONS OR REMARKS:

For Appropriate Action.





**Heart of America Northwest**

*"Advancing our region's quality of life."*

**1314 NE 56<sup>th</sup> St. #100  
Seattle, WA 98105**

April 18, 2005

The Honorable Nils Diaz, Chairman  
Nuclear Regulatory Commission  
One White Flint North Building  
11555 Rockville Pike  
Rockville, MD 20852-2738

Office of the Secretary  
Attn: Rulemaking and Adjudication  
US Nuclear Regulatory Commission  
Washington, DC 20555

Theodore Smith,  
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Office of Nuclear Materials Safety and Safeguards,  
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**Re: Connecticut Yankee Atomic Power Co.'s request for approval to dispose of radioactive waste from Haddam Neck nuclear plant at an unlicensed waste site in Idaho.**

Dear Chairman Diaz, Mr. Secretary and Mr. Smith:

Heart of America Northwest is the leading citizens' group working for the cleanup of the Hanford Nuclear Reservation and to protect the Northwest and Columbia River from contamination from Hanford or other disposal of radioactive and/or hazardous wastes. We work on behalf of over 15,000 members in Washington, Oregon and Idaho to protect the environment and health of future generations, and have played active roles reviewing and commenting on numerous landfill and disposal decisions in the Columbia River system.

As such, we are gravely concerned about the proposal to proceed with disposal of licensed radioactive waste in the US Ecology landfill in Grand View, Idaho – which has not been designed, licensed or subjected to public review for disposal of radioactive materials. Our concern is greatly compounded when, as here, it appears that this proposal is but a small component of a much larger proposal to open this and similar landfills to such disposal of wastes from commercial and other licensed nuclear facilities. As such, any action by the Nuclear Regulatory Commission must be taken only after consideration of the potential environmental

and health impacts and all alternatives in a full Environmental Impact Statement covering all related actions under consideration by the NRC.

**A Decision to Proceed at this Time to Allow Disposal of Connecticut Yankee Haddam Neck Plant Waste in the Unlicensed Landfill in Idaho will Violate NEPA**

The decision to allow disposal of licensed radioactive material in a landfill which is not licensed for such purpose; which has not been evaluated, operated, and designed for protection of health and the environment from co-disposal of radionuclides with hazardous wastes; and, where closure to meet protective standards for radionuclides is undefined - is part of a larger proposed federal action requiring both a programmatic environmental impact statement (EIS) and subsequent site specific NEPA review "tiered" under that programmatic EIS. NRC has acknowledged that it is considering such a national policy. The Haddam Neck-US Ecology proposal is one small element of this larger program under consideration by the NRC.

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. In this case, we object most strenuously to the fact that there is neither an existing programmatic EIS nor any site-specific NEPA evaluation tiered below the programmatic evaluation of impacts and alternatives to such a policy.<sup>1</sup> Thus, any decision made at this time to proceed with permitting disposal of radioactive materials in the US Ecology landfill along the Snake River at Grand View, Idaho, will violate NEPA on both the grounds that the NRC has failed to first consider the programmatic impacts and alternatives (while it has a proposal in front of it which is clearly a national programmatic decision) and failure to consider the site specific impacts and alternatives to the proposed action.

Once NRC decides on a programmatic scope, any projects undertaken below the program-level that are not comprehensively reviewed in the PEIS require subsequent review—either in a Supplemental EIS or a site-specific EIS. *Natural Resources Defense Council, Inc. v. U.S. Nuclear Regulatory Comm'n*, 606 F.2d 1261, 1271 (D.C. Cir. 1979) (EIS that is devoted to program-level decisions did not relieve agency from obligation to discuss alternatives at the project level).

We are aware that the NRC is considering a national programmatic decision with an EIS. This must occur prior to making individual decisions to allow disposal – which would fall under the alternatives considered in such a programmatic EIS. We are also aware that the Haddam Neck decision is not the only proposed disposal decision of this nature before the agency. These are part and parcel of a broader program and piecemealing the decision ahead of the nationwide review with programmatic EIS will violate NEPA. Clearly, there are alternatives for disposal of the Haddam Neck waste, and all similar wastes – which the public is legally entitled to have reviewed by the agency in an open process with an EIS which considers the cumulative impacts from similar related disposal decisions.

NEPA requires a consideration of impacts *before* they occur and without "piecemealing" an action into sub-actions in order to avoid such a review. See *Native Ecosystems Council v. Dombeck*, 304 F.3d 886, 892 (9<sup>th</sup> Cir. 2002) (NEPA requires an assessment be prepared early enough so that it is not being used to rationalize or justify a decision already made); *Atchison, Topeka and Sante Fe Railway Co. v. Callaway*, 382 F. Supp. 610, 621 (D.C. Cir. 1974) (agency

cannot artificially divide or “segment” an action under NEPA, and Courts must guard against an agency’s considering only the first step in a program).

Site Specific Impacts Not Considered in Violation of NEPA:

The proposal to proceed with disposal of Haddam Neck radioactive waste at the Idaho landfill will be a clear violation of applicable Council on Environmental Quality (CEQ) rules requiring all “connected actions” to be reviewed in a comprehensive EIS with consideration of cumulative impacts and alternatives. 40 C.F.R. § 1508.25(a)(2).

Claims that the disposal of these wastes at the site were subject to review under the hazardous waste permit are inadequate to cure the right of the public to have the impacts and alternatives considered in an EIS, and do not reflect the need to have disclosure and consideration in performance assessment, long range monitoring and closure plans of the total range and quantities of wastes proposed to be disposed. We are extremely familiar with concerns that liners and caps for hazardous wastes may not perform as intended, or create new impacts, in the presence of radionuclides. Further, long-term exposure scenarios need to consider those radionuclides and their daughter products in determining how to monitor, close and set waste acceptance limits for any landfill. Idaho is not an NRC delegated State for making radioactive license decisions. We are also entitled to consider whether there are better alternatives for disposal of these wastes – which reliance upon the Idaho permit review would deprive the public of.

The draft environmental assessment accepts applicant figures for dose to the public from disposal of the wastes solely from Haddam Neck as adding 3 mrem per year to the public. Since this facility appears interested in accepting additional wastes under similar, related proposals under consideration by the Commission, the failure to consider the total cumulative dose and risk from such related actions violates the requirements of NEPA that the Commission consider the cumulative impacts from all related actions. It is quite clear that the cumulative impacts quickly become probable significant impacts when one considers that the waste from other decommissioning projects could each add 3 or more mrem per year to the exposed public. Conservatively, if just five facilities were to dispose of waste at Grand View, this implies that the cumulative dose would equal 15 mrem per year – or what the NRC estimates is the equivalent cancer risk of five additional fatal cancers per ten thousand exposed adults. Since NEPA requires consideration of impacts to children and other sensitive populations, this is a very significant impact. (EPA and independent experts estimates for purposes of risk assessment that the same exposure will result in 3 to 10 times greater risk of cancer in children). Any additions beyond this resulting in a higher dose would exceed the USEPA guidelines and determinations for acceptable risk from closed landfills or CERCLA cleanup actions. Of course, the public is entitled to review, in an EIS, the assumptions and cumulative impacts from any such risk assessment. In my expert opinion in review of risk assessments, it is unlikely that this applicant has utilized the same default risk assessment assumptions which we would use downstream in Washington to determine risk.

The application and draft EA reveal that Transuranic wastes (TRU) would also be disposed in the Grand View, Idaho landfill under this proposal and related actions. This further triggers the need for cumulative impact analysis and generic consideration via EIS with public comment on the wisdom – and legality – of disposing of Transuranic Wastes near the Snake River. At a time

when Idaho and the EPA are retrieving Transuranic wastes from burial grounds at INEEL, it is not acceptable to dispose of Transuranic wastes (especially without consideration of cumulative impacts) near the Snake River in a landfill which was neither designed nor regulated for such long-lived wastes. These TRU wastes include Plutonium and are explicitly exempt from state regulation (or EPA regulation) under RCRA. Therefore, disposal in the Grand View, Idaho landfill – which is not licensed by NRC – would result in totally unregulated disposal of Special Nuclear, Source or Byproduct material. The impacts from, and alternatives to, and such major policy decision must be publicly revealed in an environmental impact statement and considered by the Commission in rulemaking. The provisions under which this action is proposed explicitly do not allow for the Commission to approve unregulated disposal of TRU, Special Nuclear, Source or Byproduct Materials in an unlicensed facility.

It is entirely misleading to claim that the Grand View facility is regulated by Idaho “and any disposal must comply with State requirements” when the materials in question are explicitly exempted from any State regulation under RCRA, and the State has neither authority nor rules governing such disposal. 42 USC 6903(5).

The Environmental Assessment attempts to justify this action – with no consideration of alternatives – solely on the basis of cost, without consideration of cumulative or site specific impacts or alternatives. Yet, there is absolutely no cost basis provided to support the conclusion. Indeed, we question whether reasonably available alternatives are not available at a reasonable or similar cost – while preserving all the benefits to the public and environment from regulated disposal.

The draft environmental assessment considers only the impacts from transporting these wastes in the vicinity of the Haddam Neck Plant and fails to even discuss the impacts of transporting these wastes to the Grand View facility.

Therefore, we urge the NRC to withdraw any proposed action on any individual applications to allow disposal of licensed radioactive wastes in unlicensed landfills until after completion of a programmatic environmental impact statement on such a policy, cumulative impacts and the full range of alternatives; and, to proceed only with individual disposal decisions after site specific NEPA reviews that are tiered below the national programmatic EIS (in this case, the site specific review will then need to consider cumulative radionuclide impacts from INEEL and Hanford on the Columbia along with the impacts from the Grandview landfill. Piecemealing approvals before consideration of these impacts and alternatives will violate NEPA.

**The Commission must deny the application for disposal of Connecticut Yankee Plant waste at the unlicensed Grand View, Idaho landfill and comply with NEPA by considering the impacts and alternatives to the full range of related proposals in an environmental impact statement.**

Sincerely,



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Executive Director,  
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CC: Senator Patty Murray  
Senator Maria Cantwell  
Senator Gordon Smith  
Senator Ron Wyden  
Rep. Jay Inslee  
Rep. Norm Dicks  
Rep. Adam Smith  
Commissioners Edward McGaffigan, Jr.; Jeffrey Merrifield; Greg Jaczko; Peter Lyons

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<sup>i</sup> Publication of an environmental assessment can not cure this violation. As explained above, this specific action is part and parcel of a larger set of proposed actions under active consideration by the NRC – which will have undoubted significant probable environmental and health impacts. Under NRC and CEQ rules, it is impermissible to attempt to avoid consideration and comment on those impacts by piecemealing the decision by hiding the full breadth of impacts and avoid consideration of alternatives by issuing environmental assessments for individual site by site decisions, pretending that the related proposals do not add up to a probable significant impact on health and the environment. The proposed EA fails to provide the public with the opportunity to review and comment on the actual full proposal with related actions, and, therefore, is legally inadequate under NEPA. The NRC must proceed with a programmatic EIS, and then add site specific NEPA consideration “tiered” beneath that for specific disposal decisions. For instance, without the benefit of the programmatic EIS, it is impossible for us to determine the full quantity and nature of wastes which may be disposed in the Grandview site – which is fundamental to permit decisions under either RCRA or NRC rules.

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