

June 1, 2005

The Honorable Jay Inslee
United States House of Representatives
Washington, DC 20515

Dear Congressman Inslee:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your April 19, 2005, letter to Commissioner Jaczko, in which you expressed concerns about an application by Connecticut Yankee Atomic Power Company (CYAPCO), to NRC, to dispose of radioactive demolition debris from the decommissioning of CYAPCO's Haddam Neck plant at a Subtitle C Resource Conservation and Recovery Act (RCRA) disposal facility in Grand View, Idaho. You specifically requested that NRC consider a legal argument regarding this proposal and the National Environmental Policy Act (NEPA) processes. A public advocacy group representing many of your constituents argued that under NEPA, NRC cannot grant the pending disposal application without a final programmatic environmental impact statement for disposal of low-activity waste at RCRA facilities.

CYAPCO has requested approval for alternate disposal of licensed material, pursuant to 10 CFR 20.2002. 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 license material generated in the licensee's activities." This is a long standing regulation that serves as one part of the regulatory framework for disposal of low-level radioactive waste (LLW). Under 10 CFR 20.2002, licensees can request to dispose of LLW in a manner that is not otherwise authorized in the regulations, provided that the Commission determines the method of disposal is protective of public health and safety and the environment. Licensees can propose various methods of alternate disposal, onsite burial or offsite disposal (e.g., disposal in an RCRA C or D landfill). Given the variability in the potential disposal methods and locations, each of these requests are evaluated on a case-by-case basis. For each 10 CFR 20.2002 request, the Commission performs both an environmental and technical review. The environmental review evaluates the environmental impacts of the proposed disposal method, including, to the extent appropriate, any resulting cumulative impacts. The technical review evaluates the application to ensure adherence to the Commission's policy to approve alternate disposals that will result in an annual radiation dose of a few millirem (mrem).

The rulemaking referred to by the advocacy group representing your constituents is on controlling the disposition of solid materials. The focus of this rulemaking is to establish criteria by which solid material with little or no radiation can be dispositioned. It should be noted that this is a draft proposed rule that is before the Commission for review and is subject to change. This rulemaking is a separate regulatory action and is not intended to encompass all activities that could be permitted under 10 CFR 20.2002 and, if the proposed rule is promulgated, 10 CFR 20.2002 will remain in place to provide a means by which licensees can apply for case-specific reviews of proposed disposal procedures, not otherwise authorized in the other parts of

the regulations. As currently constructed, the proposed rule would limit the release of solid material meeting a 1mrem/yr dose criterion to a set of specific disposition paths. Disposal in certain types of Environmental Protection Agency (EPA)/State regulated landfills (i.e., RCRA D) is one of the various disposition pathways considered by the rule. A draft generic environmental impact statement (GEIS) has been prepared to support the proposed rulemaking. The GEIS fully evaluates the environmental impacts, including cumulative impacts associated with the disposal of solid material meeting the 1mrem/yr dose criterion in an RCRA D landfill. All other methods of disposal for solid material or solid material exceeding the 1 mrem/yr dose criterion would require Commission review and approval. Thus, even if the proposed rule was in effect, the CYAPCO proposal would be outside the scope of the proposed rule and would still require approval under 10 CFR 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 recognizes your interest in this matter and appreciates your comments.

Sincerely,

/RA/

Nils J. Diaz

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*See previous concurrence

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