

June 27, 2005

The Honorable Bill Nelson
United States Senate
Washington, D.C. 20510

Dear Senator Nelson:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated April 20, 2005, in which you expressed concerns about a rulemaking on the disposal of low-activity radioactive waste and the NRC's decision regarding Connecticut Yankee Atomic Power Company's (CYAPCO's) application to dispose of low-activity waste prior to the completion of the rulemaking. In particular, you noted that CYAPCO's application may not be subject to public participation and other procedural protections that accompany a rulemaking.

In your letter, you referred to the proposed rulemaking on the disposition of solid material which was provided to the Commission on March 31, 2005. The Commission has completed its review of the staff's suggested approach for disposition of solid material and decided to defer the rulemaking for the time being. The Commission's decision, as stated in the Staff Requirements Memorandum of June 1, 2005, was 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 there is no immediate need for this rule because the rate at which nuclear power plants are being decommissioned was decreased.

CYAPCO requested alternate disposal of building debris from site decommissioning under the existing provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Section 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 licensed material generated in the licensee's activities." The NRC reviews and considers licensee alternative disposal requests under 10 CFR 20.2002 on a case-by-case basis. The process used for granting exemptions, such as this, was subject to public notice and comment when 10 CFR Part 20 underwent its last revision.

Specifically, CYAPCO requested authorization to exempt the slightly contaminated material from further Atomic Energy Act and NRC licensing requirements and to dispose of the material at an Environmental Protection Agency, Subtitle C, Resource Conservation and Recovery Act 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 10 CFR 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.

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. These kinds of regulatory actions do not have the same level of public participation as a notice and comment rulemaking. However, as part of the staff review process, 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 from both the States of Idaho and Connecticut were taken into consideration in the development of the environmental assessment. 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 for the 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.

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

Sincerely,

/RA/

Nils J. Diaz