

June 23, 2005

Mr. Jeremy M. Maxand
Snake River Alliance

Mr. Dan Hirsch
Committee to Bridge the Gap

Mr. Gerald Pollet, J.D.
Executive Director
Heart of America Northwest

Ms. Diane D'Arrigo
Nuclear Information and Resource Service

Dear Mr. Maxand, Mr. Hirsch, Mr. Pollet, and Ms. D'Arrigo:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your April 15, 2005, letter to the Office of the Secretary, in which you expressed concerns about an application by Connecticut Yankee Atomic Power Company (CYAPCO), to NRC, to dispose of solid waste from the decommissioning of the Haddam Neck Plant (HNP) facility at a Subtitle C Resource Conservation and Recovery Act (RCRA) disposal facility in Grand View, Idaho. You specifically requested that NRC consider several issues related to the CYAPCO proposal, including alternate disposals under the Atomic Energy Act, characterization and monitoring concerns, generic rulemaking activities, public involvement, and the National Environmental Policy Act (NEPA) processes.

On September 16, 2004, CYAPCO applied to the NRC, in accordance with the provisions of 10 CFR 20.2002, to dispose of demolition debris from decommissioning activities at the HNP facility. Section 20.2002 is a regulation of long-standing, practical use that has been applied many times over the years. It is applicable to individual licensee requests and entails its own environmental and safety evaluation for the unique and specific proposed disposal. The NRC staff determined that CYAPCO's request was protective of the public health and safety and the environment and approved the request, as supplemented, on April 19, 2005. Below, I have responded to the specific concerns you raised in your letter regarding this alternate disposal procedure.

NRC Authority Under the Atomic Energy Act

CYAPCO requested approval to dispose of solid waste from decommissioning activities of the HNP facility at the U.S. Ecology Idaho Facility in Grand View, Idaho in accordance with 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 licensed material generated in the licensee's activities." Section 20.2002 provides a disposal option available to licensees pursuant to 10 CFR 20.2001(a)(4), provided that the Commission determines the proposed method of disposal is protective of public health and safety and the environment. Each 20.2002 authorization request is evaluated by the NRC on a case-by-case basis that includes both an environmental and technical review.

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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 and may approve alternate disposals under a criterion of a few millirem (mrem) annually, which is a small fraction of the NRC limit for exposure to members of the public.

As part of the review for a request for off-site disposal at a non-NRC licensed facility under 10 CFR 20.2002, the NRC also issues a specific exemption for the material to be disposed of from further licensing and regulatory requirements. Sections 30.11, 40.14, and 70.17 implement the NRC's authority under the Atomic Energy Act to issue specific exemptions 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."

Characterization

In performing radiological dose assessments, the normal practice is to evaluate exposure scenarios which result in dose, which for the CYAPCO request included scenarios for transportation workers, landfill workers, and landfill post-closure resident farmers. For each of these evaluated scenarios, averaging is allowed as appropriate to the scenario. In addition, NRC staff requested CYAPCO establish a maximum allowable concentration on each transport container, and that CYAPCO describe how these limits would be monitored. NRC staff reviewed CYAPCO's approach and found it acceptable. CYAPCO performance would be monitored by NRC regional inspectors, as part of NRC's decommissioning site inspection program.

You also expressed concern about the potential for leakage at commercial radioactive waste landfills. Neither the dose modeling used by the licensee, nor NRC's independent verification take credit for the landfill barriers to prevent migration of radiological material to the groundwater. Thus, the dose estimates evaluated already address this concern.

Generic Rulemaking

The rulemaking you referred to is on controlling the disposition of solid materials. The Commission has disapproved publication of this proposed rule at this time. The Commission's decision is based on the fact that the Agency is currently faced with several high priority and complex tasks, that on 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. As such, the Commission is deferring this rulemaking for the time being.

However, this generic rulemaking was a separate regulatory action and was not intended to encompass all activities that could be permitted under 10 CFR 20.2002.

Public Involvement

As correctly pointed out in your letter, a 10 CFR 20.2002 authorization request does not involve

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the right to an adjudicatory hearing. CYCAPO's 20.2002 request, in effect, sought an exemption from NRC regulations. In NRC practice, requests for exemptions do not ordinarily call for an adjudicatory hearing. See *Private Fuel Storage, LLC* (Independent Spent Fuel Storage Installation), CLI-01-12, 53 NRC 459, 466-467 (2001). An exemption is not one of the hearing-triggering agency actions listed in section 189 of the Atomic Energy Act. Nonetheless, in the NRC's January 21, 2005, letter, the agency did invite the Snake River Alliance to provide written comments on CYAPCO's 10 CFR 20.2002 request. Your comments were not received prior to the agency taking final action.

NEPA Process

Each 10 CFR 20.2002 request received by the NRC is a separate action initiated by the NRC licensee as a request for an approved disposal option. Licensees retain the ability to request multiple 10 CFR 20.2002 approvals for the same materials, or to dispose of radiological material by other authorized means. In reviewing the requests, NRC staff followed the NEPA process and the Commissions regulations in 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions." For the very low contaminated materials that are typically the subject of a 10 CFR 20.2002 request, this process normally results in an environmental assessment (EA) and a finding of no significant impact (FONSI). The cumulative impact assessment for the proposed CYAPCO disposal focused on the resource affected by the proposed action - disposal in a RCRA C facility. The EA for the CYAPCO request concluded that since the conservatively modeled dose contribution from demolition debris is small, it would not constitute a significant increase in the cumulative dose at a RCRA C or other facility. Thus, the CYAPCO application for a 10 CFR 20.2002 disposal does not segment the NEPA process.

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.

I recognize your interest in this matter and appreciate your comments. I hope this response clarifies NRC's process for evaluating 10 CFR 20.2002 alternate disposal requests.

Sincerely,

/RA A.Persinko for/

Daniel M. Gillen, Deputy Director
Division of Waste Management
and Environmental Protection
Office of Nuclear Material Safety
and Safeguards

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Daniel M. Gillen, Deputy Director
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***See previous concurrence**

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NAME	TSmith*	CCraig*	SMoore*	STreby*	DGillen AP for

Mr. Maxand, Mr. Hirsch, Mr. Pollet, Ms. D'Arrigo

DATE	5/18/05	5/18/05	5/18/05	5/19/05	6/23/05
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