

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM-51-10]

Massachusetts Attorney General; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated August 25, 2006, which was filed with the Commission by Diane Curran on behalf of Massachusetts Attorney General. The petition was docketed by the NRC on September 19, 2006, and has been assigned Docket No. PRM-51-10. The petitioner requests that the NRC revoke certain regulations in their entirety, and revoke other regulations to the extent that these regulations, in the petitioner's view, state, imply, or assume that the environmental impacts of storing spent nuclear fuel in high-density pools are not significant; issue a generic determination to clarify that the environmental impacts of high-density pool storage of spent fuel, will be considered significant; and require that any NRC licensing decision concerning high-density pool storage of spent nuclear fuel be accompanied by an environmental impact statement that addresses the environmental impacts of this storage and alternatives for avoiding or mitigating any environmental impacts. The petitioner is seeking the generic treatment of spent fuel pool hazards because he believes that a pool accident at any operating nuclear power plant in the New England and Mid-Atlantic states could significantly affect the health, environmental, and economic well-being of Massachusetts.

DATE: Submit comments by **(insert date 75 days after publication in the Federal Register)**.

Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments on this petition by any one of the following methods. Please include *PRM-51-10* in the subject line of your comments. Comments on petitions submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415-1966. You may also submit comments via the NRC's rulemaking Web site at <http://ruleforum.llnl.gov>. Address questions about our rulemaking Web site to Carol Gallagher (301) 415-5905; e-mail cag@nrc.gov. Comments can also be submitted via the Federal eRulemaking Portal <http://www.regulations.gov>.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone (301) 415-1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415-1101.

Publicly available documents related to this petition may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor

will copy documents for a fee. Selected documents, including comments, may be viewed and downloaded electronically via the NRC rulemaking Web site at <http://ruleforum.llnl.gov>.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-800-397-4209, 301-415-4737 or by e-mail to pdr@nrc.gov.

A copy of the petition can be found in ADAMS under accession number ML062640409. A paper copy of the petition may be obtained by contacting Betty Golden, Office of Administration, Nuclear Regulatory Commission, Washington DC, 20555-0001, telephone 301-415-6863, toll-free 1-800-368-5642, or by e-mail bkg2@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-415-7163 or Toll Free: 1-800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The petitioner states that this petition for rulemaking is a companion to the contentions filed by the Massachusetts Attorney General on May 26, 2006, before the NRC's Atomic Safety

and Licensing Board (ASLB) in the license renewal proceedings for the Pilgrim and Vermont Yankee nuclear power plants, and raises the same substantive concern as those contentions, namely, that spent fuel stored in high-density fuel storage pools is much more vulnerable to fire than the NRC's NUREG-1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (May 1996) (GEIS) concludes. The petitioner states that the petition relies on and incorporates by reference the legal and technical assertions made in the Massachusetts Attorney General's contentions. The Massachusetts Attorney General's Request for a Hearing and Petition to Intervene With Respect to Entergy Nuclear Operations Inc.'s Application for Renewal of the Vermont Yankee Nuclear Plant Operating License can be found in NRC's ADAMS system at accession number ML061640032.

The petitioner has filed this petition in the event that the ASLB rules that certain NRC regulations render the petitioner's contentions inadmissible.

Petitioner's Request

The petitioner requests that the NRC:

- Revoke 10 CFR 51.53(c)(2) and 51.95(c), and Table B-1 of appendix A to 10 CFR part 51; and revoke 10 CFR 51.23(a) and (b), 51.30(b), 51.53, 51.61, and 51.80(b) to the extent that these regulations state, imply, or assume that the environmental impacts of high-density pool storage are insignificant and therefore need not be considered in any National Environmental Policy Act of 1969 (NEPA) analysis. The petitioner asserts that the revocation of these regulations, which according to the petitioner, "codify" the use of the GEIS by the NRC, is necessary to ensure compliance with NEPA in the Pilgrim and Vermont Yankee license renewal cases. In this regard, the petitioner asserts that new

and significant information, provided by the petitioner, shows that spent nuclear fuel stored in high-density fuel storage pools is much more vulnerable to fire than the GEIS concludes.

- Issue a generic determination that the environmental impacts of high-density pool storage of spent fuel, including the environmental impacts of accidents arising from this storage, are significant.
- Amend its regulations concerning severe accident mitigation alternatives (SAMAs). The petitioner requests that the body of SAMAs that must be discussed in an environmental impact statement or related supplement or in an environmental assessment, under 10 CFR 51.53(c)(3)(ii)(L) and Table B-1 appendix A to 10 CFR part 51 (Postulated Accidents: Severe Accidents) must include alternatives to avoid or mitigate the impacts of high-density pool fires.
- Require that any NRC licensing decision that approves high-density pool storage of spent fuel at a nuclear power plant or any other facility must be accompanied by an environmental impact statement that addresses the environmental impacts of high-density pool storage of spent fuel at that nuclear plant or facility, and presents a reasonable array of alternatives for avoiding or mitigating those impacts.

Conclusion

The petitioner asserts that a generic rulemaking would be the most effective means to ensure broad protection of public health and the environment. The petitioner states that NRC's conclusion regarding the degree of vulnerability of high-density spent fuel storage pools to fire is contained in numerous NEPA and other licensing documents, and affects many licensing decisions. Consequently, the petitioner asserts that this NRC conclusion should be revoked

“across the board” to ensure that future NRC licensing decisions are not based on inadequate consideration of environmental risks or measures for avoiding or reducing those risks. Moreover, the petitioner asserts he has an interest in seeking generic treatment of spent fuel pool hazards because he believes that a pool accident at any one of the operating nuclear power plants in the New England or Mid-Atlantic states could have a significant effect on the health, environmental, and economic well-being of the Commonwealth of Massachusetts.

Dated at Rockville, Maryland, this 26th day of October 2006.

For the Nuclear Regulatory Commission.

/RA/

Annette L. Vietti-Cook,
Secretary of the Commission.