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From: Jane Swanson <janeslo@kcbx.net>
To: <SECY@nrc.gov>
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Subject: Rulemaking 10 CFR Part 51

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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

January 2, 2007

TO: Secretary, U.S. Nuclear Regulatory Commission,
Washington, DC 20555-0001,
ATTN: Rulemakings and Adjudications Staff.
E-mail: SECY@nrc.gov

FROM: Jane Swanson, Spokesperson,
San Luis Obispo Mothers for Peace
P.O. Box 164
Pismo Beach, CA 93448
janeslo@kcbx.net

RE: MASSACHUSETTS ATTORNEY GENERAL'S PETITION FOR RULEMAKING
TO AMEND 10 C.F.R. PART 51

Docket No.
PRM-51-10

The San Luis Obispo Mothers for Peace is in full agreement with the positions of Citizens Awareness Network, as expressed in the letter below. We have been intervenors in Diablo Canyon nuclear plant issues since 1973, and we were the party that won the favorable environmental ruling in the Ninth Circuit of the U.S. Court of Appeals referred to in the body of the letter below (emphasis added). Mothers for Peace strongly urges the NRC to acknowledge the legal and environmental arguments in favor of rescinding the NRC's finding that environmental impacts of spent reactor fuel pool storage are insignificant.

POSITION OF CITIZENS AWARENESS NETWORK

Secretary, U.S. Nuclear Regulatory Commission,
Washington, DC 20555-0001,
ATTN: Rulemakings and Adjudications Staff.
E-mail: SECY@nrc.gov

COMMENT REGARDING MASSACHUSETTS ATTORNEY
GENERAL'S PETITION FOR RULEMAKING TO AMEND 10
C.F.R. PART 51
Docket No. PRM-51-10

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SECY-02

Date: December 22, 2006
Subject: Docket No. PRM-51-10
Rulemaking Amending 10 CFR Part 51

CAN supports the Massachusetts Attorney General's petition for rulemaking to rescind the NRC's finding that environmental impacts of spent reactor fuel pool storage are insignificant. We agree with petitioners request that the NRC Commission:

- (a) consider new and significant information showing that NRC's characterization of the environmental impacts of spent fuel storage as insignificant in the 1996 Generic Environmental Impact Statement for Renewal of Nuclear Power Plant Licenses is incorrect,
- (b) revoke regulations codifying the incorrect conclusion eliminating consideration of spent fuel storage impacts in NEPA decision-making documents,
- (c) issue a generic determination that the environmental impacts of high-density spent fuel pool storage are significant, and
- (d) order that any NRC licensing decision that approves high-density spent fuel pool storage at a nuclear power reactor or other facility must require the creation of an environmental impact statement ("EIS") addressing (i) the environmental impacts of high density pool storage of spent fuel at that nuclear reactor and (ii) provide a reasonable array of alternatives for avoiding or mitigating those impacts.

Massachusetts Attorney General's Petition meets the standard for Rulemaking Petitions. NRC regulation 10 C.F.R. § 2.802(a) provides that "[a]ny interested person may petition the Commission to issue, amend or rescind any regulation." The regulations require that the petitioner describes specific issues involved, views or arguments with respect to those issues, relevant technical, scientific or other data involved which is reasonably available to the petitioner, and other pertinent information that the petitioner deems necessary to support the action sought. 10 C.F.R. § 2.802(c)(3). The Massachusetts AG's meets this standard.

The rule also requires that the petitioner "should note any specific cases of which petitioner is aware where the current rule is unduly burdensome, deficient, or needs to be strengthened." The AG has met this requirement as well. The AG requests the

revocation of 10 C.F.R. §§ 51.53(c)(2) and 51.95(c) and Table B-1 of Appendix A to 10 C.F.R. Part 51 to ensure NEPA compliance in the Pilgrim and Vermont Yankee license renewal cases if the ASLB or the Commission interprets those regulations to bar the consideration of significant new information presented by the Attorney General's contentions regarding the environmental impacts of high-density pool storage of spent fuel. CAN supports this revocation.

The National Environmental Policy Act (NEPA) requires NRC to take a "hard look" at new and significant information regarding environmental impacts of spent fuel storage. NEPA requires that before taking major federal action, NRC must take this "hard look" at the environmental impacts of the action. Clearly this would include an analysis of the vulnerabilities of fuel pools in a post 9/11 world. Any refusal to address this issue is both fool hardy and ludicrous.

The Attorney General's contentions in both the Vermont Yankee and Pilgrim license renewal petitions are replete with new and significant information that would require a NEPA review. The significant documentation in support of its petition include information confirmed by the NRC Staff in NUREG-1738, Final Technical Study of Spent Fuel Pool Accident Risk and Decommissioning Nuclear Power Plants (January 2001) ("NUREG-1738"), and by the National Academies of Sciences. (NAS Committee on the Safety and Security of Commercial Spent 5 Nuclear Fuel Storage, Safety and Security of Commercial Spent Nuclear Fuel Storage at 53-54) (The National Academies Press: 2006)

The AG maintains that the environmental assessments for both reactors do not satisfy the requirements of 10 C.F.R. § 51.53(c)(3)(iv) and NEPA, 42 U.S.C. § 4332 et seq., because they fail to address this new and significant information regarding the reasonably foreseeable potential for a severe accident involving nuclear fuel stored in high-density storage racks in the fuel pool. CAN agrees with and supports the AG's contentions. These contentions address the increased vulnerability to fire of spent fuel in high-density storage pools and the fact that the License Renewal GEIS or other NEPA decision documents such as NUREG-0757, or the Waste Confidence Rule addresses this increased vulnerability. This significant new information establishes that, across a broad range of

scenarios:

- (a) if the water level in a fuel storage pool drops to the point where the tops of the fuel assemblies are uncovered, the fuel will burn,
- (b) the fuel will burn regardless of its age,
- (c) and the fire will propagate to other assemblies in the pool.

In accepting this petition for rulemaking, the Commission, as requested by the Massachusetts AG, should withhold any decision to renew the operating licenses for the Vermont Yankee and Pilgrim nuclear power reactors until the requested rulemaking is completed and until NRC completes the NEPA process for consideration of environmental impacts of high-density spent fuel pool storage at these nuclear reactors.

Additionally as raised by the Massachusetts AG, the requirements of 10 C.F.R. § 51.53(c)(3)(iii) are not met since reasonable alternatives for avoiding or reducing the environmental impacts of a severe spent fuel accident are not considered. Alternatives raised by the AG include re-racking the fuel pool with low-density fuel storage racks and transferring a portion of the fuel to dry storage. These alternative considerations are supported by expert declarations and reports of Drs. Gordon Thompson and Jan Beyea.

Recently, the Ninth Circuit of the U.S. Court of Appeals overturned the Commission's rationale for categorically refusing to consider the impacts of intentional attacks in any EIS. *San Luis Obispo Mothers for Peace v. NRC*, No. 93-74628 (June 2, 2006). The rationales provided by NRC for refusing to address similar issues in the relicensing of Vermont Yankee and Pilgrim reactors will in all likelihood be overturned upon Appeal to the First Circuit if NRC refuses to address the new and significant information provided.

The Commission also should apply the Ninth Circuit's decision by considering the environmental impacts of intentional attacks on nuclear power plant fuel storage pools in all prospective licensing decisions. Moreover, the EIS must be prepared prior to the licensing decisions.

In this final rule, the regulatory requirements for performing a NEPA review for a license renewal application are similar to the NEPA review requirements for other major plant licensing actions. Consistent with the current NEPA practice for major plant licensing actions, this amendment to 10 CFR Part 51 requires the

applicant to submit an environmental report that analyzes the environmental impacts associated with the proposed action, considers alternatives to the proposed action, and evaluates any alternatives for reducing adverse environmental effects. Additionally, the amendment requires the NRC staff to prepare a supplemental environmental impact statement for the proposed action, issue the statement in draft for public comment, and issue a final statement after considering public comments on the draft.

As discussed in Marsh, NEPA is an "action-forcing" statute that requires federal agencies to continue to take a "hard look" at the effects of their proposed actions, even after they have been approved. 490 U.S. at 372-73. NRC's regulatory scheme assigns license applicants broad responsibility to conduct what amounts to a first draft of the NRC's NEPA analysis in its ERs. It would be inconsistent with NEPA for the NRC to excuse licensees from identifying an entire category of new and significant information bearing on the environmental impacts of a proposed nuclear operation, when licensees have a high level of access to that information and when the regulatory scheme places so much reliance on applicants to address environmental issues.

Accordingly, the plain language of 10 C.F.R. § 51.53(c)(3)(iv), its regulatory history, and the statutory framework of NEPA require Entergy to address new and significant information bearing on the environmental impacts of pool fires in its ERs for renewal of the Pilgrim and Vermont Yankee licenses. Moreover, the Attorney General was entitled to challenge the adequacy of the ERs' discussion of the issue.

A Rulemaking Is Desirable Because It Would Achieve a Greater and More Consistent Level of Environmental Protection. Although the Attorney General's primary concern in bringing this rulemaking petition is to ensure adequate consideration of the environmental impacts of renewing the Pilgrim and Vermont Yankee operating licenses, a generic rulemaking would be the most effective means to ensure broad protection of public health and the environment. The NRC's incorrect conclusion regarding the alleged insignificance of high-density pool storage of spent fuel is contained in numerous NEPA and other licensing documents, and affects many licensing decisions. CAN supports the revocation across the board in order to ensure that future NRC licensing decisions are not based on inadequate consideration of environmental risks

or measures for avoiding or reducing those risks. We are also concerned with generic treatment of spent fuel pool hazards because a pool accident at any one of the operating nuclear power plants in the New England and Mid-Atlantic states could have a significant effect on the health, environmental, and economic well-being of CAN's members in New England and New York .

THE COMMISSION MUST SUSPEND ANY CONSIDERATION OF THE MASS ATTORNEY GENERAL'S CONTENTIONS IN THE VERMONT YANKEE AND PILGRIM PROCEEDINGS PENDING A GENERIC RESOLUTION OF THE ISSUES RAISED IN THE RULEMAKING PETITION.

Respectfully submitted,

Deb Katz
Citizens Awareness Network
Box 83
Shelburne Falls, MA 01370

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Jane Swanson
janeslo@slonet.org
janeslo@kcbx.net

CC: <can@nukerbusters.org>

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Subject: Rulemaking 10 CFR Part 51
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From: Jane Swanson <janeslo@kcbx.net>

Created By: janeslo@kcbx.net

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