

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

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OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

**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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Date: January 3, 2006  
Subject: 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 petitioner's 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.

The Massachusetts Attorney General's (AG) 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 the petitioner to describe 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 petition 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 new and significant information bearing on 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 foolhardy 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 includes 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 and other NEPA decision documents (such as NUREG-0757, or the Waste Confidence Rule) fail to address 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, and
- (c) 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.

Additionally, the AG in its rulemaking amendment requires 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. This requirement is essential to assure public participation in matters that vitally affect them. It would also satisfy NRC's mandate to assure public confidence.

We agree with the AG's position that since NEPA is an "action-forcing" statute that requires federal agencies to take a "hard look" at the effects of their proposed actions, (even after approval), it would be inconsistent with NEPA for NRC to excuse licensees from identifying an entire category of new and significant information bearing on the environmental impacts of a requested licensing action. Therefore 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 is 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 MASSACHUSETTS 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  
Executive Director  
Citizens Awareness Network  
Box 83  
Shelburne Falls, MA 01370  
[www.nukebusters.org](http://www.nukebusters.org)

Rochelle Becker, Executive Director  
Alliance for Nuclear Responsibility  
[www.a4nr.org](http://www.a4nr.org)  
PO 1328  
San Luis Obispo, Ca 93406-1328

Sandra Gavutis  
Executive Director  
C-10 Research and Education Foundation  
44 Merrimac St.  
Newburyport, MA 01950

Alyssa Schuren  
Toxics Action Center  
Executive Director  
802-223-8422 (p-VT)  
617-747-4389 (p-MA)  
[Alyssa@toxicsaction.org](mailto:Alyssa@toxicsaction.org)  
[www.toxicsaction.org](http://www.toxicsaction.org)

Eric Joseph Epstein  
4100 Hillsdale Road  
Harrisburg, PA 17112  
(717)-541-1101 Phone

Jim Warren  
Executive Director  
North Carolina Waste Awareness & Reduction Network  
Ph: 919-416-5077 Fax: 919-286-3985  
PO Box 61051, Durham, NC 27715-1051  
Email: [Jim@ncwarn.org](mailto:Jim@ncwarn.org) Web: [www.ncwarn.org](http://www.ncwarn.org)

**From:** Deb Katz <deb@nukbusters.org>  
**To:** <SECY@nrc.gov>  
**Date:** Fri, Jan 19, 2007 10:43 AM  
**Subject:** Citizen Awareness Network Comments on Docket No. PRM-51-10

Attached are Citizens Awareness Network's comments regarding\* \* Docket No. PRM-51-10

Thank you,

Deborah Katz  
Executive Director  
Citizens Awareness Network

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