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**Date:** Tue, Sep 4, 2007 8:39 PM  
**Subject:** Uranium Recovery GEIS

Attached please find comments on the Proposed Generic Environmental Impact Statement for ISL Uranium Recovery — 72 Fed. Reg. 40344-40346, July 24, 2007.

Sarah M. Fields  
Glen Canyon Group/Sierra Club

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## Glen Canyon Group/Sierra Club

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September 4, 2007

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RE: Scoping Comments on Proposed Generic Environmental Impact Statement for ISL Uranium Recovery — 72 Fed. Reg. 40344-40346, July 24, 2007

### 1. Extension of Scoping Period

This is to request an extension of the period for scoping comments on the proposed Generic Environmental Impact Statement (GEIS) for in situ leach (ISL) uranium recovery operations that was noticed in the *Federal Register* on July 24, 2007 (Notice) (72 Fed. Reg. 40344-40346). The comment period should be extended from September 4, 2007, to October 31, 2007. This request is based on the following:

1.1. The Nuclear Regulatory Commission (NRC) has, in effect, granted the National Mining Association (NMA) until approximately October 31 to submit scoping comments and information relevant to the development of the draft GEIS. On August 16, 2007, the NRC held a public meeting with the NMA at NRC headquarters in Rockville, Maryland, to discuss NMA's "interest in providing environmental information relevant to the ongoing Generic Environmental Impact Statement for Uranium Recovery."

At that meeting the NMA stated that it intended to submit a comprehensive report containing historical information and data pertaining to the environmental impacts associated with ISL uranium extraction. The submittal of this report would provide information to the NRC during the period prior to the issuance of the draft GEIS. NMA stated that they would submit the table of contents of the report by the January 4, 2007, scoping comment suspense date and submit the full report around the end of October.

At the August 22, 2007, NRC meeting with Powertech Uranium Corporation at NRC headquarters, an NRC staff person stated that the NRC will incorporate what they think is appropriate from the NMA report into the GEIS.

The July 24 Notice told the public that it has until September 4, 2007, to submit written comments and that "comments mailed after that date will be considered to the

Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

2

extent possible." Apparently, NRC staff has already pre-determined that it will consider comments that NMA will submit about two months after the close of the noticed comment period.

The NRC should extend this privilege to every member of the public.

1.2. The NRC failed to establish a web site page that would have provided additional information on the proposed GEIS, a place to submit scoping comments, and access to the comments submitted by others.

1.3. The July 24 Notice contains inadequate and inaccurate information.

1.3.1. The Notice fails to mention whether this GEIS is a "programmatic" GEIS.

1.3.2. The NRC failed to mention the fact that the NRC also is in the process of developing proposed rules for groundwater at ISL operations, in consultation with the Environmental Protection Agency (EPA) and NRC Agreement States. In fact, the NRC has plans to develop rules that could allow the NRC to defer the regulation of groundwater at ISL operations to the EPA and some states. The NRC should have provided information in the Notice about this proposed rulemaking and discussed the GEIS in the context of proposed changes in the regulatory framework for uranium recovery ISL operations.

1.3.3. The Notice provides misleading information. The Notice states that "information and documents associated with the GEIS are available for public review through the NRC electronic reading room: <http://www.nrc.gov/reading-rm/adams.html>." The Notice also refers the public to the NRC Public Document Room (PDR). There is no mention of any specific document or set of documents related to the GEIS that a member of the public might access. It is unclear which documents the NRC expected the public to find on ADAMS or at the PDR. My initial search for documents on ADAMS specifically related to the GEIS brought up nothing of relevance, though related documents may have been recently added to ADAMS.

1.3.4. The Notice contains misleading information regarding conventional uranium mills.

In Supplementary Information, 1.0 Background, the Notice states that conventional mills "are typically in areas of low population density, and they typically process ores from mines within 50 kilometers (30 miles)." This is not accurate or meaningful information.

At this time there are two conventional mills in the United States that are licensed to operate, and only one is really in an operational status. In making generalizations about conventional uranium mills, it is not clear which conventional mills the NRC considered in coming to its conclusions regarding the siting of mills near populations and the "typical" distance from the uranium mines. The Notice does not state which mills the NRC used to make its statistical study regarding nearness to populations and distance of mills from operating uranium mines.

Both the White Mesa Mill (Utah) and the Cañon City Mill (Colorado) are near residential populations. So, typically, operating conventional mills are close to

Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

3

communities where people live, work, and recreate. It may be low density to the NRC, but the communities that live near the mills are just as impacted as if they were ten times the size.

The information regarding distance from the uranium mines is also erroneous. If the mills being referred to are the two conventional mills licensed to operate, the statement couldn't be further from the truth. For example, I know of no uranium mines within 30 miles of the White Mesa Mill in San Juan County, Utah. Denison Mines in operating the Pandora Mine, at least 80 miles away, and is in the process of getting permits for a mine that is 117 miles away. Previously (before 1999, when they stopped processing ore at the mill) the distance from White Mesa to the mines was far greater distance than 30 miles. It was the same for the Moab Mill and many other conventional mills.

These misleading and meaningless generalizations regarding conventional mills should not have been included in the Notice.

1.3.5 The proposed GEIS would be, in fact, a supplement to the September 1980 *Final Generic Environmental Impact Statement on Uranium Milling*, Project M-25, Vol. I-III (NUREG-0706) (FGEIS). Yet, the Notice makes no mention of this document and fails to acknowledge that the proposed GEIS would be—or should be—a supplement to the 1980 programmatic EIS for uranium milling.

1.4. With the limited amount of information available and the lack of hearings in the vicinity of many of the proposed ISL operations, the public needs more time to properly respond to the July 24 Notice. Even the NMA needs until the end of October, and they have known about a proposed GEIS for ISL uranium recovery for at least 7 months.

1.5. The Notice fails to consider the alternative of NO Generic Environmental Impact Statement. The NRC errs by not putting that important question out to the public for consideration and comment.

## **2. The NRC Should Not Develop a GEIS for ISL Uranium Recovery.**

The NRC should not develop a GEIS for ISL uranium recovery for the following reasons:

2.1. The NRC's justification for developing and relying on the GEIS in lieu of site-specific Environmental Impact Statements (EISs) is contrary to the requirements of the implementing regulations of the National Environmental Policy Act (NEPA) found at 40 C.F.R. 1500-1508.

The July 24, 2007, *Federal Register* Notice states that "the NRC announces its intent to prepare a Generic Environmental Impact Statement (GEIS) in accordance with the National Environmental Policy Act (NEPA) and NRC's NEPA implementing regulations contained in 10 CFR Part 51." The notice further states that "the GEIS will assess the potential environmental impacts associated with uranium recovery at milling facilities employing the in-situ leach (ISL) process." For some reason, the Notice fails to

Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

4

reference the implementing regulations for NEPA found at 40 C.F.R. Parts 1500-1508, which are also applicable to NRC's NEPA process.

On August 16, 2007, the NRC held a public meeting at its headquarters in Rockville, Maryland, to discuss the National Mining Association's "interest in providing environmental information relevant to the ongoing Generic Environmental Impact Statement for Uranium Recovery."

During the August 16 meeting, in response to a question from a member of the public, NRC staff provided an explanation of how the staff came to certain conclusions regarding NRC responsibilities under NEPA with respect environmental reviews of new applications for ISL uranium recovery operations. This same subject was discussed on August 16 at another NRC meeting, —a meeting with Uranerz Energy Corporation held to discuss issues related to Uranerz's upcoming ISL uranium recovery application.

Based on the information provided by NRC staff at the two meetings on August 16, it appears that the decision to pursue a GEIS for ISL uranium recovery operations was based on a determination that there were insufficient personnel and resources available to do site-specific environmental impact statements for all of the expected ISL uranium recovery applications. Therefore, NRC staff decided to approach their NEPA responsibilities by developing a GEIS for ISL uranium recovery operations and use that document as a basis for environmental reviews of site-specific applications and issue an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or, if necessary, a supplemental Environmental Impact Statement. NRC staff has determined that no complete site-specific EISs would be developed either prior to or after the issuance of the GEIS.

Unfortunately, the NRC staff did not provide the Commission and the public with detailed, **written** documentation of the grounds for proposing a GEIS for ISL uranium extraction operations.

The NRC justification for this approach fails to take into consideration the requirements of 40 C.F.R. § 1507. Section 1507 discusses "Agency Compliance" and, in part, states:

Sec. 1507.1 Compliance.

**All agencies of the Federal Government shall comply with these regulations..** It is the intent of these regulations to allow each agency flexibility in adapting its implementing procedures authorized by Sec. 1507.3 to the requirements of other applicable laws. [Emphasis added.]

Sec. 1507.2 Agency capability to comply.

**Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below.** [Emphasis added.] Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

5

(a) Fulfill the requirements of section 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by section 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) **Prepare adequate environmental impact statements pursuant to section 102(2)(C)** and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards. [Emphasis added.]

According to 40 C.F.R. § 1507, the NRC has an unequivocal responsibility to assure that personnel and other resources are available to develop Environmental Impact Statements responsive to site-specific applications.

The regulations implementing NEPA do not state that, if you do not have sufficient personnel and other resources available to develop site-specific Environmental Impact Statements, you can get by with a Generic Environmental Impact Statement and site-specific Environmental Assessments, with an accompanying Findings of No Significant Impact, as is contemplated by NRC staff.

The statements made by NRC staff to a prospective licensee (at the meeting with Uranerz on August 16) that the NRC does not have the personnel and other resources available to develop site-specific Environmental Impact Statements, pursuant to its responsibilities under Section 102(2)(C) (42 USC § 4332) of NEPA, contradict the requirements for agency compliance in 40 C.F.R. § 1507.

2. 2 By relying on a GEIS and site-specific EA, the NRC would not be in compliance with the Commission's regulations at 10 C.F.R. Part 51, which provide specific requirements regarding the types of licensing actions that would require a site-specific Environmental Impact Statement. Section 51.20 (Criteria for and identification of licensing and regulatory actions requiring environmental impact statements), in part, states:

Sec. 51.20

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b) The following types of actions require an environmental impact statement or a supplement to an environmental impact statement:

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**(8) Issuance of a license to possess and use source material for uranium milling** or production of uranium hexafluoride pursuant to part

Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

6

40 of this chapter. [Emphasis added.]

The NRC staff has stated on several occasions that it would not develop site-specific EISs for new ISL license application, but would develop a site-specific EA, with the possibility of a subsequent supplemental EIS.

Section 51.20 is very clear that a uranium milling license, whether for a conventional uranium milling operation or for an ISL operation **requires** a site-specific EIS **process**.

A site-specific EIS process starts with a scoping process and is followed by the development of a draft EIS that is made available for public comment. This process would probably include local hearings (that is, in the vicinity of a proposed ISL project) to receive oral comments. The site-specific EA process that the NRC contemplates does not require scoping, nor does the issuance of a draft EA for public comment. The NRC staff would have the option of issuing a draft FONSI for public comment. That's it! This is clearly a process that is inadequate to properly identify, characterize, review, and assess the environmental impacts associated with the operation of an ISL facility.

The EIS process seeks to include the public in the development of a comprehensive decision-makers document; the EA process specifically excludes the public in the development of a very limited decision-makers document, which also must be accompanied by a Finding of No Significant Impact. In Section 51.20 there is no provision for an Environmental Assessment, or combination Environmental Assessment and Generic Environmental Impact Statement, for the issuance of a license to possess and use source material for ISL uranium milling operations.

The reliance on a GEIS and a site-specific EA for the licensing of new ISL uranium extraction operations is contrary to the requirements 10 C.F.R. § 51.20. Section 51.20 demands a site-specific EIS process for ISL facilities.

The NRC staff should not manipulate and undermine the NEPA process in order to solve its budget difficulties—perceived or real. The NRC staff should go to the Commission and explain that the NRC has a legal responsibility to provide the resources and personnel necessary to conduct full site-specific environmental reviews and develop the site-specific Environmental Impact Statements that are required by NRC regulation under 10 C.F.R. § 51.20.

### 2.3. The GIES will be prejudicial to any site-specific NEPA process.

The NRC has told at least one prospective licensee (August 16, 2007) that they would have to wait until after the GEIS is issued before the NRC could complete its environmental review of the application. The prospective licensee intends to submit its application for an ISL operation within the next six months and would have liked for the NRC to develop an EIS responsive to that application.

It is doubtful that NRC, after the prospective licensee has waited over a year for the completion of the GEIS, would turn around and inform the prospective licensee that, sorry, the NRC cannot issue a FONSI and will need to develop a site-specific EIS or



Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007,  
September 4, 2007

7

supplemental EIS. This would delay further the possible issuance of a license. These delays in the environmental review process, which may be lengthy if there are delays in the issuance of the GEIS, would likely influence any determination regarding whether an EIS or supplemental EIS is appropriate. It is almost a forgone conclusion that the NRC will come forth with an EA and an accompanying a FONSI for any of the license applications where the environmental review is delayed by issuance of the proposed GEIS.

The NRC staff has gone so far as to state that they would work on the site-specific EA while the GEIS is being developed. So, even before the NRC has received the environmental report that is part of the application, the staff has, apparently, already pre-determined that there will be no significant impacts from the proposed project and there would be no site-specific EIS process.

2.4. Apparently, the development of the GEIS would shift the costs of the of site-specific environmental reviews from the prospective licensee to a broad range of NRC licensees. That would be of immense benefit to prospective ISL licensees. Such a shift of financial responsibility for site-specific environmental reviews is not appropriate. The Staff Requirements Memorandum (SRM) that directed the staff to develop a generic environmental impact (SRM M070507; Briefing on FSME Programs, Performance, And Plans; May 18, 2007) (ML071410086) directed the staff to "recover the costs through a surcharge assessed to all NRC licensees paying Part 171 fees." Normally, the costs for staff environmental reviews associated with an application for the construction and operation of a 10 C.F.R. Part 40 uranium recovery facility are borne by the licensee. As explained by NRC staff:

Hourly fees to process and review the application and other work related to the licensing action are fully recoverable (10 CFR 170.31). These fees, which are billed quarterly, include work performed by the NRC and its contractors (e.g., some part of the NEPA analysis will likely be performed by a contractor). quarterly basis. [Electronic mail from Paul Michalak, NRC to Mike Thomas, Uranerz, November 28, 2006 (ML063380277)]

The NRC has now set it up so that a large part of the costs for site-specific reviews and the development of the appropriate NEPA document for Part 40 ISL applications will be spread to "all NRC licensees paying Part 171 fees."

The NRC did not discuss these changes in the allocation of financial responsibility for the NEPA analysis in the July 24 Notice or in the August meetings with prospective licensees. It was not discussed by the NRC at the annual NMA Uranium Recovery Workshop in Denver, Colorado, in mid-May, nor has it be discussed at any NRC meetings with prospective ISL licensees that I am aware of. (I have attended at least 10 of such meetings in person or via conference call.)

It is probably that this attempt to transfer site-specific licensing costs for NEPA analyses to other NRC licensees is not in conformance with NRC regulation. It also sets

Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

8

a ill considered and unfortunate precedent.

2.5. The May 18 SRM directs the staff to develop a GEIS that is "as broad and would cover as many of the potential uranium recovery sites as possible." The NRC staff has also stated that the GEIS would be as encompassing as possible. Since the NRC does not have the applications (including the environmental reports) for any of the potential ISL uranium recovery projects, it is hard to understand how, exactly, the NRC will be able to develop a GEIS that will consider and analyze the impacts to these potential sites. What information will the NRC be relying on? Thus far, the NRC has not informed the public about what data and information will be used as the basis of the GEIS.

Clearly, without site-specific environmental reports for potential uranium recovery projects, the NRC will not have any basis for developing a GEIS that would replace an EIS for a site-specific application.

2.6. Most of the potential environmental impacts of a uranium extraction facility are site specific and must be addressed in a site-specific EIS, as is required under 10 C.F.R. § 51.20. This is substantiated by the 1980 *Final Generic Environmental Impact Statement on Uranium Milling*. In that document, in response to a comment regarding in situ uranium extraction, the NRC stated "because of the intensely site-specific nature of the chief environmental impacts from in situ extraction, those involving groundwater contamination, the staff does not consider it of value to do further general assessments of such impacts." NUREG-0706, Vol. II, 1.1, page A-11.

Since 1980, has anything changed with respect the **intensely site specific nature of the chief environmental impacts from in situ extraction?**

2.7. The July 24 Notice lists a number of "Environmental Impact Areas to be Analyzed": public and occupational health, waste management, land use, transportation, geology and soils, water resources, ecology, air quality, noise, historical and cultural resources, visual and scenic resources, socioeconomics, environmental justice, and cumulative effects.

All of these environmental impacts are site specific in nature. It is would not be possible for the NRC to be able to know, understand, and assess all of these aspects of a proposed ISL operation without having site-specific information, without conducting a scoping process, and without giving the public an opportunity to comment on a comprehensive site-specific draft EIS.

The NRC staff is requiring prospective ISL licensees to submit the kinds of information in the license application that would support a comprehensive NEPA review, that is, an EIS review. The information in these applications is not being submitted in order to form the basis of a generic or programmatic EIS, nor is it being submitted to form the basis for a limited EA review.

2.8. By requiring that a license to construct and operate an ISL uranium extraction facility should be accompanied by an EIS process in 10 C.F.R. § 51.20, the NRC acknowledges that these are major agency actions with environmental impacts that cannot be adequately characterized and analyzed in the context of a limited EA process. Further,

Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

9

the NRC is acknowledging that the construction and operation of an ISL facility will, by its very nature, have significant impacts. This is further substantiated by the requirement for long-term care of the site by the Department of Energy (DOE) or a state agency after site decommissioning. Therefore, there can be no justification for the issuance of a Finding of No Significant Impact (required when an EA is issued), as is contemplated by NRC staff for new ISL operations. In the case of uranium extraction facilities, the NRC, in Section 51.20, has already determined that a FONSI is not justified.

2.9. By relying on a GEIS and site-specific EAs, it is likely that the NRC will no longer provide the EPA with the kinds of information that the EPA has been relying on to make EPA ISL permitting decisions under the Safe Drinking Water Act. The July 16, 2002, summary of the June 11, 2002, NRC meeting with the EPA in situ leach permitting states and the EPA (ML021970625) provides information about the EPA's reliance on NRC NEPA reviews. The Meeting Summary (page 3) states that the "EPA relies on NRC's detailed National Environmental Policy Act environmental review, in addition to information provided by the State, as a basis for granting the aquifer exemption and other technical aspects for the UIC [Underground Injection Control] permit."

If the NRC no longer conducts detailed site-specific NEPA reviews, as would be the case if the NRC only conducts site-specific EA reviews, the EPA will no longer be able to rely on the NRC reviews for UIC permits and aquifer exemptions. This would likely result in delays in EPA permitting reviews. This could also result in inadequate EPA permitting reviews, to say nothing of inadequate NRC reviews under the limited EA process.

2.10. A limited EA process will not provide the NRC with sufficient environmental information upon which to make sound licensing decisions during construction and operation of an ISL facility and during the decommissioning of the facility. The limited NEPA review process will cut short the kind and extent of the analysis of pertinent environmental data. The EA process will severely limit the opportunity for the public and local, state, tribal, and federal agencies to have input during the licensing process. This will cripple the NRC's NEPA analysis and subsequent licensing decisions.

2.11. The 1980 programmatic GEIS for uranium milling was developed, in part, to support the promulgation of new NRC regulations for uranium milling operations and the tailings and waste from such operations.

At this time, the NRC has plans to promulgate regulations pertaining to groundwater at ISL operations. According to recent statements by NRC staff (August 22, 2007), the rulemaking process will take place at about the same time as the GEIS process. However, there is no indication on the public record of any connection between the proposed GEIS and the proposed rulemaking and how one will impact the other. There is no mention of the environmental impacts associated with the proposed rulemaking or of a document that would evaluate those impacts. The July 24 Notice does not mention the rulemaking. Commission documents related to the proposed rulemaking, which has been in the works for around 10 years, do not mention the proposed GEIS process. This

Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

10

is a serious flaw in both the GEIS and rulemaking processes.

There are questions about what aspects of the groundwater at ISL facilities will be actively regulated by the NRC as a result of the rulemaking. There are questions of what aspects of the environment at an ISL facility the NRC will actually have responsibility for. The two processes are obviously interconnected in a substantive way, yet the public is being kept uninformed.

The NRC must provide complete and accurate information to the public about the substantive connections between the proposed GEIS and the proposed rulemaking. I don't mean vague statements about the timing of the two documents.

2.12. The proposed GEIS would not provide the NRC, industry, and the public with a much needed update of the 1980 *Final Generic Environmental Impact Statement on Uranium Milling* (FGEIS). That FGEIS that is over 20 years old and is obviously out of date. It was based on a "model mill" and does not evaluate years of actual environmental impacts associated with the construction, operation, decommissioning, and long-term care of uranium mills. There is over 25 years of experience by industry, the NRC, the public, and other federal, state, and local agencies with respect the operation and regulation of the uranium milling industry. This experience and reality is not reflected in the 1980 document. If the NRC is going to issue a GEIS for uranium extraction, it should include a through update of the 1980 FGEIS.

2.13. The proposed GEIS fails to address the environmental impacts associated with the processing of low-level radioactive waste and mixed low-level and hazardous waste at licensed uranium extraction facilities, under the guise of the processing of "ore." This new regulatory program, which is based on an NRC policy guidance and not on any NRC regulation, has never been assessed by either a generic or site-specific EIS process.

If the NRC intends to develop a GEIS for ISL uranium extraction, it should also develop a GEIS for the extraction of uranium from materials other than "natural ore."

2.14. The limited site-specific environmental review will have negative impacts on the long term care of ISL facilities after decommissioning. The DOE (or state) will need to rely on extensive site-specific environmental data and a comprehensive environmental and technical review of the data as a basis for long-term care. If the NRC restricts both the staff and public review processes this will limit the information that the DOE will have available to it during decommissioning and long-term care.

2.15. The NRC staff's plan to rely on general information brought forth in a GEIS and a limited EA review process to satisfy its regulatory responsibilities under NEPA will undermine the already shaky public confidence in the NRC's regulatory framework for the licensing and oversight of uranium recovery operations.

2.16. There is little on the public record at this time about why the NRC has decided to develop a GEIS for ISL uranium extraction. For some reason, the NRC staff chose not to write a SECY paper that would put into writing the staff's thinking on this matter—along

Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

11

with supporting documentation—for the benefit of the Commission and the public. The discussion at the May 7, 2007, Commission Meeting is rather skimpy.

It appears that the NRC has not put a lot of thought into this GEIS process and its implications. Neither the staff nor the Commission thought to bring before the public the question of whether or not the NRC should even develop a GEIS and, as a consequence, rely on the GEIS and site-specific EAs for site-specific licensing decisions. The NRC failed to involve the public in this significant decision making process.

However, it is not too late for the NRC to reconsider and withdraw this seriously flawed proposal.

Thank you for this opportunity to comment. I reserve the right to provide additional comments upon the receipt of new information.

Sincerely,

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Scoping Comments: 72 Fed. Reg. 40344-40346, July 24, 2007  
September 4, 2007

12