

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Jan 24, 2008 17:14

PAPER NUMBER: LTR-08-0039 **LOGGING DATE:** 01/24/2008
ACTION OFFICE: OGC
AUTHOR: Mr. Marvin Fertel
AFFILIATION: NEI
ADDRESSEE: CHRM Dale Klein
SUBJECT: Waste Confidence Rulemaking Proceeding (Project #689)
ACTION: Appropriate
DISTRIBUTION: EDO, Chairman, Commissioners
LETTER DATE: 09/28/2007
ACKNOWLEDGED: No
SPECIAL HANDLING:
NOTES: Letter received in SECY 01/24/2008
FILE LOCATION: ADAMS
DATE DUE: **DATE SIGNED:**



NUCLEAR ENERGY INSTITUTE

Marvin S. Fertel
SENIOR VICE PRESIDENT AND
CHIEF NUCLEAR OFFICER

September 28, 2007

The Honorable Dale E. Klein
Chairman
U.S. Nuclear Regulatory Commission
Mail Stop O 16 C1
Washington, DC 20555-0001

Subject: Waste Confidence Rulemaking Proceeding

Project Number: 689

Dear Chairman Klein:

Thank you for the opportunity to brief the Commission at the August 22, 2007 public meeting on new plant deployment. The Commission's recent action, resulting from that briefing, directed the NRC staff to address promptly the matter of Waste Confidence. As noted in the Commission Secretary's September 7, 2007 Memorandum to the Executive Director for Operations and General Counsel, it is "the nuclear industry['s] view that it [i]s appropriate to update the NRC's Waste Confidence findings in the near term."

The Commission has demonstrated over a period of more than twenty years that the most effective and responsible way to address Waste Confidence in the regulatory context is through rulemaking. In this regard, and with the expected filing of license applications for new plants, the Waste Confidence rulemaking directed by the Commission is considered to be of the highest priority by the industry.

The fact that, since 1999, when the Commission last considered the need for further evaluation of its Waste Confidence determination, a number of "significant and pertinent unexpected events" have now occurred, necessitating a rulemaking to update and modify the bases for the Waste Confidence findings. In this regard, we note that these events include announced plans for more than 30 new commercial nuclear power reactors, the most recent application for which was just submitted this week. In addition, 48 license renewals have been issued, and more than 30 additional are already announced. However, while plans for increased nuclear generation have developed and been, or are being, implemented, the 70,000 metric tons of heavy metal—often referred to as "70,000 MTU"—limit on Yucca Mountain capacity contained in Section 114(d) of the Nuclear Waste Policy Act (42 U.S.C. § 10134(d)) has remained in effect. Since the new reactors and license renewals refer

The Honorable Dale E. Klein

September 28, 2007

Page 2

above would, by themselves, be expected to result in the generation of spent nuclear fuel in excess of the statutory 70,000 MTU limit, their emergence constitutes significant and pertinent unexpected events, warranting reevaluation of the bases underlying the Commission's 1990 determination of Waste Confidence. In addition, and of particular significance to the current bases for Waste Confidence, the Administration and the Congress are considering a more integrated used fuel management policy that could include recycling and closing of the fuel-cycle over an extended period of time. The implementation of such a strategy would not only impact the waste form(s) being disposed of, but would also impact the timing for the disposal.

Based on the foregoing, it is fully appropriate for the Commission to commence a rulemaking proceeding in the very near term. Initiating this proceeding now will ensure that the Waste Confidence findings, which clearly are most appropriately addressed in a generic context, do not become subject to challenge in individual adjudicatory proceedings on new plant COLs. Not only would that be a particularly inefficient use of NRC and litigant resources, but that approach also could result in inconsistent determinations on exactly the same question.

Accordingly, the industry believes that there is both a strong policy and legal basis upon which to proceed with the Commission-directed rulemaking. Further, in light of the announced filings of COL applications in the near-term, the industry also suggests that the NRC establish an expedited schedule (e.g., completion within twelve months of initiation) for NRC staff to develop the proposed rulemaking, obtain stakeholder input and issue a final rule.

Again, NEI appreciates the Commission's attention to this important matter. We look forward to participating in the rulemaking process.

Sincerely,



Marvin S. Fertel

c: The Honorable Peter B. Lyons, Commissioner, NRC
The Honorable Gregory B. Jaczko, Commissioner, NRC
Ms. Karen D. Cyr, General Counsel, NRC
Mr. Luis A. Reyes, Executive Director for Operations, NRC