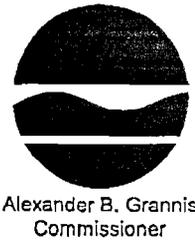


New York State Department of Environmental Conservation
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PR 51
(73FR59540)

DOCKETED
USNRC

December 23, 2008 December 24, 2008 (11:22am)

OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary
U.S. Nuclear Regulatory Commission,
Washington, DC 20555-0001

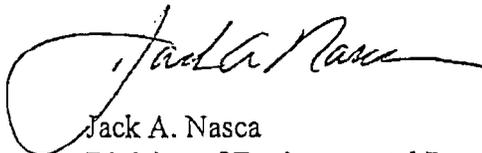
ATTN: Rulemakings and Adjudications Staff

Re: Nuclear Regulatory Commission
10 CFR Part 51, RIN 3150-AI27, NRC -2008-0269
Categorical Exclusions from Environmental Review

Dear Secretary,

Attached are comments from the New York State Department of Environmental Conservation on the Nuclear Regulatory Commissions proposed revisions to 10 CFR Part 51, Categorical Exclusions from Environmental Review.

Sincerely,



Jack A. Nasca
Division of Environmental Permits
New York State Department of
Environmental Conservation

A. Peterson, NYSERDA
B. Little, Esq., NYSDEC
J. Matthews, Esq., NYSDEC

Template = SELY-067

SELY-02

New York State
Department of Environmental Conservation
December 23, 2008

Re: Nuclear Regulatory Commission
10 CFR Part 51, RIN 3150-AI27, NRC -2008-0269
Categorical Exclusions from Environmental Review

Proposed Change to 10 CFR 51.22(c)(9)

Comment - The fact that an EA and FNSI have been issued for an exemption in the past is not sufficient justification to preclude all future requests for an exemption from Part 50 or 52 from a NEPA review. Parts 50 & 52 contain provisions that regulate a broad range of activities at nuclear facilities. The New York State Department of Environmental Conservation (NYSDEC) urges the NRC to take a hard look at the breadth of activities to be covered under this proposed revision to more carefully define the types of exception requests that truly qualify to be classified as "Categorical Exclusions". Section 51.22(c)(9) is very broad in nature and scope, and providing a categorical exemption in all cases enhances the risk of two critical defects: (1) that the public will be deprived of an opportunity to comment on an exemption from one or more of the enumerated "requirements" that potentially impacts public health, safety or welfare, and (2) important technical reviews will be foregone because a permit or license holder's request for exemption is erroneously considered insignificant. While the NYSDEC understands the administrative advantages and efficiencies available by adding to the categorical exemptions, the proposed language, is overly broad and the exemption concept warrants additional, more refined conditioning language to ensure that the above risks are avoided.

Proposed Addition to 10 CFR 51.22(c)(25)

Comment - 51.22(c)(25)(v)(C), (D) & (F) address activities that appear to be more safety related than administrative. Granting an exemption to an inspection requirement (C) or a maintenance requirement (D) or a request for an exemption to requirements for safeguard plans or materials control accounting (F) seems to be more than administrative in nature. The NYSDEC urges the NRC to remove these items from the list of activities eligible for listing as a "Categorical Exclusion".