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VIA MAIL & EMAIL

January 28, 2009

Annette Vietti-Cook  
Secretary  
Nuclear Regulatory Commission  
Washington, D.C. 200555-0001,  
ATTN: Rulemakings and Adjudications Staff  
[Rulemaking.Comments@nrc.gov](mailto:Rulemaking.Comments@nrc.gov)

Re: Waste Confidence Decision

Dear Secretary:

My client, the North Carolina Waste Awareness and Reduction Network ("NC WARN"), requested that I write to you about the NRC's proposed Waste Confidence Decision (the "Decision"). NC WARN does not have any confidence that irradiated "spent" fuel generated by the existing nuclear plants and the proposed reactors can be safely disposed.

The Decision was originally issued in 1984 and most recently amended in 1999. It is apparent that the Decision is being amended again because it does not address, nor was it ever envisioned to address, the combined operating license applications ("COLAs") for new reactors being reviewed by the NRC Staff. This proposed replacement of a failed policy with another failed policy fails to protect public health and safety under the Atomic Energy Act or protect the environment under the National Environmental Policy Act ("NEPA"). It is far easier for the Commission to arbitrarily amend the Decision than it is for it to face the reality that there remains no viable solution to the nuclear waste question.

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The proposed Decision is technically inadequate and fails to support any reasonable level of confidence that the necessary radioactive waste repositories can or will be licensed. The Decision violates NEPA because it is not supported by an Environmental Impact Statement ("EIS") that fully evaluates the environmental impacts of the waste streams whose creation would be authorized by the Decision. Some of the significant flaws in the proposed Finding of No Significant Impact ("FONSI") are:

- a. The FONSI looks only at a small portion of what is necessary to create a viable national policy on how the United States nuclear industry will handle its spent fuel and other high-level wastes from the entire fuel cycle, such as depleted uranium tails and Greater-Than-Class-C ("GTCC") waste.
- b. The FONSI does not address the significant risks of catastrophic fire posed by high-density storage of spent fuel.
- c. The FONSI does not address terrorist threats to irradiated nuclear fuel and high-level radioactive waste – whether it is being stored on-site at commercial reactors in storage pools or dry casks, stored in away-from-reactor independent spent fuel storage Installations, or transported by truck, train, or barge between nuclear plants and off-site interim storage facilities.
- d. The FONSI does not address the advantages and disadvantages of dry-cask storage on site.

Importantly, the proposed Decision and FONSI do not contain any discussion of the environmental implications of the lack of options for permanent disposal of the irradiated fuel. It is clear at this point that the proposed Yucca Mountain site is not only technically infeasible, it is becoming more and more politically infeasible as costs mount and deadlines become meaningless.

The current DOE estimate of the cost of the Yucca Mountain repository is in excess of \$90 billion, up from the \$56-billion cost estimates in 2001. It is unjustified for the Commission to assume that Congressional funding will continue to fund even the licensing for the first repository, let alone the full cost for construction and operation of Yucca Mountain, when costs are increasing so rapidly and that repository lacks capacity even to accommodate the spent fuel from the currently operating reactors.

The original Decision expected a repository to be opened in the 2007 to 2009 time period. Since then, the Commission has consistently backtracked and the 1999 Status Report states merely that "at least one" repository will open by 2025. Current estimates by DOE now give the "best-possible" opening date for the Yucca Mountain site at 2020. Given the 25-year process to date at Yucca Mountain, DOE's best-possible date seems at best overly optimistic.

Moreover, the Decision is based on DOE's prediction that approximately 105,000 metric tons of commercial irradiated nuclear fuel will be generated by the year 2046. This DOE prediction assumed that the term of license extensions for operation reactors would be only ten years, so that the Commission's now-routine approval of twenty-year license extensions to existing commercial nuclear reactors will only increase the quantity of high-level radioactive waste. DOE also assumed there would be no new commercial nuclear reactors in the United States and that no waste from other countries would be included. Thus, the high-level waste and spent fuel generated by the current generation of reactors will far exceed the capacity of any single repository, even if there was one currently available.

As recently as March 2008, at the Commission's Regulatory Information Conference, Mr. Sproat, the director of the DOE Office of Civilian Radioactive Waste Management announced that there would be enough commercial irradiated nuclear fuel by early 2010 to fill Yucca to its legal limit. The NRC has no idea what will happen to the nuclear waste in the real world and "wishing it does not make it so."

In conclusion, NC WARN urges the Commission to rethink its Waste Confidence Decision so that it becomes a viable policy on what we do with our current nuclear waste. Certainly no new reactors can be licensed based on a decision so grossly flawed.

Please inform me on any decision the Commission makes regarding the Waste Confidence Decision.

Sincerely,

John D. Runkle  
for NC WARN

## Rulemaking Comments

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**From:** John Runkle [jrunkle@pricecreek.com]  
**Sent:** Tuesday, February 03, 2009 4:00 PM  
**To:** Rulemaking Comments  
**Subject:** Comments on Waste Confidence Decision  
**Attachments:** waste confidence.pdf

VIA MAIL & EMAIL

Attached are NC WARN's comments on the "waste confidence" decision.

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