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PR 51
(73FR59547)
(73FR59551)

Joseph R. Egan (1954-2008)
Martin G. Malsch

Charles J. Fitzpatrick
John W. Lawrence

February 5, 2008

Secretary
ATTN: Rulemakings and Adjudications Staff
U.S. Nuclear Regulatory Commission
Washington D.C. 20555-0001

Re: Comments to Waste Confidence Decision Update, published at 73 Fed. Reg. 59551

Dear Sir or Madam:

The State of Nevada (Nevada) submits the following timely comments in response to the Commission's proposed Waste Confidence Decision Update, published at 73 Fed. Reg. 59551 (October 8, 2008) ("Update"), and the Commission's related proposed amendment to 10 C.F.R. § 51.23 (a), which address the environmental impacts from extended storage of reactor spent fuel.

As the Commission is aware, Nevada petitioned for a similar update and rule change on March 1, 2005, and the Commission denied that update request on August 10, 2005. Nevada still believes that an update is needed to avoid prejudicing the outcome of the Yucca Mountain licensing proceeding, as stated in Nevada's 2005 petition (attached). Nevada is pleased that the Commission's proposed Update would no longer rely on the assumption that Yucca Mountain will be licensed and, therefore, Nevada generally supports the Commission's proposed Update.

The Commission asked for comment on an alternative approach to Waste Confidence Finding 2 whereby there would be no conclusion regarding the time frame for when a geologic repository would become available. Nevada supports such an alternative approach because it believes that specifying a time frame involves too much speculation about public acceptance, future technology, a possible redirection of the waste disposal program, adequate funding, and the outcome of NRC licensing proceedings. The Commission was after all wrong in its previous expressions of confidence involving specific dates, however reasonable they may have seemed at the time. Moreover, as Nevada said in its 2005 petition, whatever the NRC's period of safe storage of spent fuel might be, it is long enough for the Commission to generally conclude that, even if Yucca Mountain fails, one or more other repository sites (or some other form of

Template = SECY-067

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disposition) would be available before dry storage of reactor spent fuel (either on or near reactor sites or in separate ISFSIs) could pose any significant safety or environmental problem.

Should the Commission agree with this approach, it could dispense with Finding (2) altogether, as the point is covered by Finding (3):

Finding 3: The Commission finds reasonable assurance that HLW and Spent Fuel will be managed in a safe manner until sufficient repository capacity is available to assure the safe disposal of all HLW and Spent Fuel

As it is, Nevada has some difficulty with the wording of proposed section 51.23(a). As proposed, the generic finding that spent fuel could be stored safely and without significant environmental impacts would apply "until a disposal facility can reasonably be expected to be available." Nevada prefers the wording in its 2005 petition, which was as follows:

The Commission has made a generic determination that there is reasonable assurance all licensed reactor spent fuel will be removed from storage sites to some acceptable disposal site well before storage causes any significant safety or environmental impacts.

This generic finding does not apply to a reactor or storage site if the Commission has found, in the 10 CFR Part 50, Part 52, Part 54 or Part 72 specific licensing proceeding, that storage of spent fuel during the term requested in the license application will cause significant safety or environmental impacts.

This wording is supported fully by the analysis and discussion in the Commission's proposed Update, and it is consistent with the alternative approach to the Update Finding 2 discussed above because it avoids speculation about when a disposal facility can reasonably be expected to be available. The last sentence is added to be consistent with 10 C.F.R. § 51.23(c), which provides that § 51.21(a) does not alter any requirement to consider environmental impacts during the requested license terms in specific reactor or spent fuel storage license cases. The NRC should not prejudge this review of potential safety or environmental impacts from storage during the requested license term in any pending or future licensing proceeding.

Should the Commission adopt its proposed Finding (2): "The Commission finds reasonable assurance that sufficient mined geologic repository capacity can reasonably be expected to be available within 50-60 years beyond the licensed life for operation . . ." it needs to clear up the ambiguity inherent in the reference to the 50-60 year time period. Presumably the Commission means it expects a repository within 60 years.

We would note that in making Finding (4), that spent fuel can be stored for at least 60 years beyond the licensed life for operation of a reactor, the Commission would be saying that storage is acceptable for about 120 years, as that would be about the age of the oldest spent fuel. As a final matter Nevada is pleased that that the Commission, in explaining why a renewed repository effort would take a long time, quotes with approval the conclusions of a 1998

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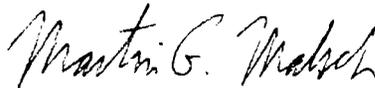
independent panel reporting to the Canadian government (*Report of the Nuclear Fuel Waste Management and Disposal Concept Environmental Assessment Panel*, February 1998):

To be considered acceptable in Canada, the panel found that a concept for managing nuclear fuel wastes must:

- (1) Have broad public support;
- (2) be safe from both a technical and social perspective;
- (3) have been developed within a sound ethical and social assessment framework;
- (4) have the support of Aboriginal people;
- (5) be selected after comparison with the risks, costs and benefits of other options; and
- (6) be advanced by a stable and trustworthy proponent and overseen by a trustworthy regulator.

If these requirements were applied to Yucca Mountain, would it satisfy any of them?

Respectfully submitted,



Martin G. Malsch



Rulemaking Comments

From: Susan Montesi [smontesi@nuclearlawyer.com]
Sent: Thursday, February 05, 2009 2:22 PM
To: Rulemaking Comments
Cc: mmalsch@nuclearlawyer.com; cfitzpatrick@nuclearlawyer.com;
jlawrence@nuclearlawyer.com
Subject: Comments to Waste Confidence Decision Update (73 Fed. Reg. 59551)
Attachments: 2009 02 05 Nevada Comments re Waste Confidence.pdf

Per my discussion with Emile Julian, attached are the State of Nevada's Comments to Waste Confidence Decision Update (73 Fed. Reg. 59551). The original is being sent via Federal Express for delivery tomorrow.

Please reply and let me know you have received this email.

Thank you.

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Received: from mail1.nrc.gov (148.184.176.41) by TWMS01.nrc.gov
(148.184.200.145) with Microsoft SMTP Server id 8.1.291.1; Thu, 5 Feb 2009
14:23:32 -0500

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X-SBRS: 3.8

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Received: (qmail 31390 invoked from network); 5 Feb 2009 19:22:32 -0000

Received: from unknown (71.149.162.74) by
smtpauth22.prod.mesa1.secureserver.net (64.202.165.44) with ESMTP; 05 Feb
2009 19:22:29 -0000

From: Susan Montesi <smontesi@nuclearlawyer.com>

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CC: <mmalsch@nuclearlawyer.com>,
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Subject: Comments to Waste Confidence Decision Update (73 Fed. Reg. 59551)

Date: Thu, 5 Feb 2009 13:22:25 -0600

Message-ID:

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Importance: Normal

X-MimeOLE: Produced By Microsoft MimeOLE V6.00.2900.3198

Disposition-Notification-To: "Susan Montesi" <smontesi@nuclearlawyer.com>

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