

# PUBLIC SUBMISSION

<b>As of:</b> January 08, 2013
<b>Received:</b> January 02, 2013
<b>Status:</b> Pending_Post
<b>Tracking No.</b> 1jx-82w4-ctrl
<b>Comments Due:</b> January 02, 2013
<b>Submission Type:</b> Web

**Docket:** NRC-2012-0246  
 Consideration on Environmental Impacts on Temporary Storage of Spent Fuel After Cessation of Reactor Operation

**Comment On:** NRC-2012-0246-0001  
 Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation

**Document:** NRC-2012-0246-DRAFT-0527  
 Comment on FR Doc # 2012-26295

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## General Comment

**Comment#** 338  
**77 FR 65137**  
**10/25/2012**

See attached file(s)

## Attachments

WCR Comments

**SUNSI Review Complete**  
**Template = ADM - 013**  
**E-RIDS= ADM -03**  
**Add= S. Lopas (SLL2)**

January 2, 2013

Cindy Bladley, Chief  
Rules, Announcements, and Directives Branch (RADB)  
Office of Administration  
Mail Stop: TWB-05-B01M  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

SUBJECT: Docket ID NRC-2012-0246; Consideration of Environmental Impacts of Temporary Storage of Spent Fuel After Cessation of Reactor Operation; Request for Scoping Comments

Dear Ms. Bladley:

I am pleased to take this opportunity to offer my comments on the NRC's initiative to be responsive to the D.C. Circuit Court determination of June 8, 2012, that some aspects of the Commission's Waste Confidence Decision (WCD) in 2010 did not satisfy the NRC's obligations under the National Environmental Policy Act (NEPA). The Court concluded that the Commission's Waste Confidence Decision is a major Federal action (mFa) that could significantly affect the quality of the human environment. Unless appealed, the Court's determination should lead to the preparation of an environmental impact statement (EIS); while the Court offered that the NRC could limit its environmental review to an environmental assessment (EA) that may result in a Finding of No Significant Impact (FONSI), I believe that its determination precludes this option. I commend the Commission's decision to proceed with the preparation of an EIS in an open and transparent manner, and to allow for the greatest level of participation by the public in the process.

I have been involved in the preparation of reviews considering the environmental impacts of nuclear power reactor activities for more than four decades; a large portion of that time was in the employ of the NRC. I did make a point of not discussing these comments directly with the NRC Staff involved in the environmental review because I had not completed my first anniversary after separating from the NRC. That anniversary just passed and I no longer feel constrained.

My comments are focused more on the process that the Staff should consider as it conducts its review rather than the technical aspects of the review. My scoping comments are listed below, and I will embellish on each of them:

- (1) The review should be conducted against revealed standards, not standards that are developed after the Staff's work product is published;
- (2) The review need not be *de novo*; there is a significant body of work already developed by the NRC that is relevant and, in most cases, is current; and,
- (3) The review should use other NEPA practices when it is appropriate to do so.

## REVEALED STANDARDS

The NRC has a tradition of publishing regulatory guidance to assist the public and its own Staff on the form and substance of material to be presented to the NRC and of material published by the NRC. By doing so, NRC management reveals acceptable practices by the Staff and levels of detail necessary to formulate recommendations to agency decisionmakers so that they may make informed decisions. While the Regulatory Guide (RG) Series is the principal tool for the public, the NRC Staff has Standard Review Plans (SRPs) and a myriad of other tools (such as Interim Staff Guidance, Review Standards, Branch Technical Positions, etc.) to ensure that its actions cannot possibly be challenged as *arbitrary and capricious*.

By revealing its review standard, the public will have the opportunity to understand the Staff's rationale supporting its evaluations and its basis for making recommendations. This instant WCD review may not require an Environmental SRP (ESRP), such as a NUREG-1555, but it should, nevertheless, have a review plan that would guide the Staff when determining that it has a sufficient basis to draw a conclusion. In a similar vein, if the Staff elects to use the regulatory framework to communicate the severity of potential impacts initially developed for License Renewal (see, Appendix B to Part 51, Footnote 3), then it should reveal how the conclusions are translated into the impact category levels (i.e., *SMALL*, *MODERATE*, and *LARGE*). All too often, as a Staff representative, I had to explain to other members of the public that the impact category levels were not mere adjectives, they are regulatory conclusions based on fact.

I recommend that the NRC publish a document revealing its review standard in advance of publishing the Draft EIS.

## REVISITING WCD IS NOT A *DE NOVO* UNDERTAKING

I am pleased that the NRC Staff established a web page listing NRC documents related to Waste Confidence (<http://www.nrc.gov/waste/spent-fuel-storage/wcd/documents.html>). The judgment of the Court to vacate the 2010 WCD does not invalidate the information considered by the Commission nor does it invalidate the analyses performed by the Staff. I believe that the Court's action was related to its view of NRC's procedural compliance with NEPA. As the NRC rectifies the record, it should be able to rely heavily upon the information and bases previously considered. I suggest that the NRC Staff add other documents to its web page (i.e., not limited to NRC documents) that it considers to be material to the review; the public would benefit from this. Finally, in revealing source information that would be considered by the Staff, I believe the public could take the constructive opportunity to offer information or insights on why the Staff should not rely upon existing information.

Had the NRC Staff prepared an EIS for the 2010 WCD, then an update should consider whether there is information that is both *new and significant* that has the potential to affect its prior analyses. In the absence of an earlier EIS, the NRC Staff still has the requirement to "... independently evaluate and be responsible for the reliability of all information ..." used in the EIS. Consequently, the currency of the information used and the analyses performed should be part of the Staff's independent evaluation. However, I do not believe that an independent evaluation requires either a confirmatory or a *de novo* analysis. Clearly, there is new information since 2010 that should be considered by the Staff, for example the cascading effects of the severe natural phenomena in Japan on its nuclear power plants and the economic and environmental consequences therefrom. However, I believe that the Staff should be circumspect to preserve context and to ensure that it does not overvalue that event in Japan for

a NEPA action in the U.S.; there are sufficient safety culture, operational and regulatory differences between plants of the same vintage in the different countries.

Notwithstanding its own work performed to support every WCD up to the 2010 action, the NRC is not the sole source of information related to the potential environmental impacts associated with the storage, transportation, and disposal of high-level waste. An obvious source that cannot be overlooked is the Department of Energy's (DOE's) EIS to support its application for a repository in Nevada. Frankly, the DOE "No Action" alternative to licensing a permanent repository in the reasonably foreseeable future is analogous to the Commission's vacated WCD of 2010. While the NRC Staff cannot merely rely on that EIS, it can perform an independent evaluation of it to determine which parts of it are sufficient reliable that the NRC can take ownership of it. This is not a new concept; in fact, the NRC Staff already performed the review shortly after the DOE EIS was issued.

### **USE OTHER NEPA PRACTICES**

The NRC Staff should focus its efforts on determining the significant issues that must be analyzed in detail; however, not all impacts are created equal. Consequently, not all technical review areas warrant the same level of analysis. Consistent with its own regulatory requirements and consistent with conventional NEPA practices across the Federal government, the NRC Staff has an obligation to "... identify and eliminate from detailed study issues which are peripheral or are not significant or which have been covered by prior environmental review. Discussion of these issues in the statement will be limited to a brief presentation of why they are peripheral or will not have a significant effect on the quality of the human environment or a reference to their coverage elsewhere." In the same manner that a Supplemental EIS can make reference to a more detailed analysis elsewhere, the WCD EIS should do the same.

The NRC Staff should keep in mind that the EIS is not a technical treatise on a variety of subjects; rather, it is an important document to assist NRC decisionmakers in making informed decisions. Matters that make a difference in the judgment warrant considerable attention; matters that do not influence the outcome should be summarized. To do otherwise would be a disservice to the public because it would place demands on the attention of members of the public and dilute their efforts to add value to the deliberation.

Other NEPA practices, such as *tiering*, *incorporation by reference*, and *adoption* are discussed in Appendix A to Part 51. These practices are not limited to NRC work products; in fact, the NRC Staff should consider adopting portions of the DOE EIS (discussed earlier).

Thank you for the opportunity to contribute to this important issue before the Commission.

Sincerely,

Barry Zalzman

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