

1996

General Information**Assigned Office:** NMSS**OEDO Due Date:** 03/15/2013**Other Assignees:****SECY Due Date:** 03/15/2013**Date Response****Requested by Originator:****Other Parties:****Subject:** Request for Oversight of the Construction of a High Level Nuclear Waste Facility at the Site of the Pilgrim Nuclear Power Station**Description:****CC Routing:** NRR, OGC, RegionI**ADAMS Accession Numbers - Incoming:****Response / Package:****Other Information****Cross Reference No:** LTR-13-0138**SRM\Other:** No**Process Information****Action Type:** E-mail**OEDO Concurrence:** No**Signature Level:** NMSS**OCM Concurrence:** No**Special Instructions:****OCA Concurrence:** No

Sent to DPC for Immediate Release in ADAMS per SECY.

Document Information**Originator Name:** Margaret E. Sheehan**Date of Incoming:** 02/12/2013**Originator Org:** Pilgrim Coalition and Attorney
at Law**Document Received by OEDO Date:** 02/13/2013**Addressee:** Chairman Macfarlane**Incoming Task:****OEDO POC:** Yen-Ju Chen

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Feb 13, 2013 15:44

PAPER NUMBER: LTR-13-0138 **LOGGING DATE:** 02/12/2013
ACTION OFFICE: EDO
AUTHOR: Meg Sheehan
AFFILIATION:
ADDRESSEE: NRCExecSec Resource
SUBJECT: Requests the proper NRC oversight of the construction of a high level nuclear waste facility at the site of the Pilgrim Nuclear Power Station in Plymouth, MA
ACTION: Direct Reply
DISTRIBUTION: RF, OGC, Chrm, Cmrs, SECY to Ack.
LETTER DATE: 02/12/2013
ACKNOWLEDGED No
SPECIAL HANDLING: Lead office to publicly release 24 hours after SECY's assignment, via SECY/EDO/DPC.
NOTES:
FILE LOCATION: ADAMS
DATE DUE: 03/15/2013 **DATE SIGNED:**

EDO --G20130119

Pilgrim Coalition*Pilgrim Watch*EcoLaw

c/o P.O. Box 380083
Cambridge MA 02238

February 12, 2013

Allison Macfarlane
Chairman
Nuclear Regulatory Commission
Mail Stop O-16G4
Washington, DC 20555-0001

Re: Entergy's Pilgrim Nuclear Power Station, Plymouth, Massachusetts
Request for Enforcement of NRC Regulations For Construction of Spent Nuclear
Fuel Storage Facility

Dear Ms. Macfarlane,

We are writing on behalf of a network of residents and groups who are substantially affected by the operations of the Pilgrim Nuclear Power Station in Plymouth, Massachusetts (Pilgrim). The Pilgrim Coalition is a non-partisan network of citizens and organizations dedicated to raising awareness of – and reducing – significant risks to public safety, health and our environment arising from the continued operation of Pilgrim Nuclear Power Station. Pilgrim Watch is a grassroots organization that serves the public interest in issues regarding the Pilgrim Nuclear Power Station in Plymouth, MA. EcoLaw is a volunteer led advocacy campaign assisting groups and individuals concerned about Pilgrim.

This letter concerns Entergy Nuclear Generating Corporation's (Entergy) construction of a high-level radioactive waste storage facility at Pilgrim. Entergy's documents and public statements establish that it is building such a facility. The Nuclear Regulatory Commission's position that this is "pre-construction" activity not regulated by the agency is inconsistent with NRC regulations.

Relevant Facts

1. Entergy has started construction of a dry cask storage facility. See, e.g. "Entergy has actually broken ground on a \$120 million project to build a special pad on the grounds of the Pilgrim Nuclear Power Station that will, eventually, house up to 40 dry-cask storage units." See, Old Colonial Memorial, THE FUKUSHIMA INTERVIEWS: PART 2: Dry cask move not about safety - Duxbury, MA - Wicked Local Duxbury <http://www.wickedlocal.com/duxbury/news/x478683671/THE-FUKUSHIMA-INTERVIEWS-PART-2-Dry-cask-move-not-about-safety#ixzz2CJ8M65tW>

2. According to the NRC, Entergy is building a "heavy haul route." Dec. 19, 2012 Email from NRC (Bellamy) to Sheehan. A June 7, 2007 letter from Entergy to NRC states that the Pilgrim interim spent fuel storage installation (ISFSI) includes a "transporter path," and includes cost for this. ML071700121 Thus, any "heavy haul route" or "transporter path" is part of the ISFSI, according to Entergy's description of it.

3. Entergy is building a retaining wall 14" high 210 feet long" according to a building permit it obtained on December 5, 2012 from the Town of Plymouth, after construction had already begun.

4. In Feb. 2, 2012, Entergy asked the state for permission to move sewer lines to get them out of the way of the retaining wall for the ISFSI. See, Letter from Entergy (Scheffer) to DEP (Gould). This letter states that Entergy is,

"proposing to relocate two existing sewage lines at Pilgrim Nuclear Power Station in Plymouth to allow for installation of a retaining wall associated with the planned dry cask fuel storage installation....A 155 foot section of the 4 inch forced main coming from lift station alpha to the top of the hill behind the former indoctrination and Support (I&S) building will be taken out of service and replaced with a new 210 foot, 4 inch forced main at a location to the south of the existing line. (See enclosed drawing). Similarly, the 4 inch gravity sanitary pipe from the I&S Building ton the hill to septic tank on-site will be taken out of service and a new 4 inch gravity pipe will be installed in the same location as the new forced main. (See enclosed drawing) The new pipe route is designed to avoid the planned retaining wall."

5. In December 2012, the NRC informed EcoLaw that,

"The NRC has not received any licensing request from Entergy for a licensing action concerning the ISFSI at Pilgrim. If Entergy wants to work on the transporter path (heavy haul route) to the ISFSI they can do so without NRC approval. They can also start on a berm if they so desire. This is not construction of an ISFSI which will need the licensing action. Entergy may define these activities, *if they want, as beginning work... I also note that the work they are doing now is "at their own risk,"* pending NRC review and potential approval of a licensing action if and when such an action is submitted." December 27, 2012 Email from NRC (Bellamy) to Sheehan. (emphasis supplied) See also, ML 12250A698.

The NRC appears to be taking the position that Entergy, at some indefinite point in the future, will be required to submit a license for the ISFSI it is already building at Pilgrim. (See, Bellamy email). If this is inaccurate, please inform us immediately, and let us know what process will be used to ensure appropriate regulatory oversight of Entergy's ISFSI at Pilgrim.

6. Entergy's construction is subject to local wetlands zoning approval, as stated by the Town Building Inspector. See, Building Permit, December 2012. The site is in

the “coastal zone” as defined by the Federal Coastal Zone Management Act, and state counterparts.

Legal Issues

There is currently no long-term permanent repository for spent nuclear fuel such as that currently stored at Pilgrim in wet pools. Pilgrim’s spent nuclear fuel may be stored at the site permanently. See, e.g., State of New York v. Nuclear Regulatory Commission, 681 F. 3d 471 (D.C.Cir. 2012)(“If the government continues to fail in its quest to establish one [a permanent repository] then SNF will seemingly be stored on site at nuclear plants on a permanent basis. The Commission can and must assess the potential environmental effects of such failure.”)

Entergy’s construction and operation of the ISFSI at Pilgrim must be evaluated as an entirety before irrevocable commitments are made that Entergy will claim it cannot afford to reverse. Such review is more crucial in light of the fact that the SNF “will seemingly be stored on site” at Pilgrim “on a permanent basis.” State of New York v. Nuclear Regulatory Commission, 681 F. 3d 471 (D.C.Cir. 2012).

Entergy’s spent fuel storage at Pilgrim is subject to the NRC regulations in 10 CFR 72.6. The NRC’s position that Entergy can build the transporter path (heavy haul route), which is part of the ISFSI, without regulatory review is erroneous. The NRC states that “Entergy may define these activities if they want, as beginning work...” In fact, as a matter of law, Entergy **cannot** “define these activities if they want as beginning work...” Instead, the NRC’s regulations define “commencement of construction” as including exactly the types of activities Entergy has done, and is continuing to do at Pilgrim.

“Commencement of construction” means “any clearing of land, excavation, or other substantial action that would adversely affect the natural environment of a site.” 10 CFR 72.3 This NRC regulation contains four exceptions, none of which apply here. The four exceptions are,

- (1) Changes desirable for the temporary use of the land for public recreational uses, necessary borings or excavations to determine subsurface materials and foundation conditions, or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values;
- (2) Construction of environmental monitoring facilities;
- (3) Procurement or manufacture of components of the installation; or
- (4) Construction of means of access to the site as may be necessary to accomplish the objectives of paragraphs (1) and (2) of this definition.

Entergy’s construction of the transporter path, retaining wall, and moving sewer lines are not “means of access to the site” for purposes of “other preconstruction monitoring” under (1), nor are they “construction of environmental monitoring facilities” under (2). Clearly, Entergy has “commenced construction” of its ISFSI within the meaning of 10 CFR 72.3. The NRC’s position that this is not “commencement of construction” is

arbitrary and capricious and erroneous as a matter of law.

All of the activities Entergy has been engaged in since about mid-2012 to build the spent fuel storage facility are exactly the type of construction activities contemplated by the NRC's regulations. Under 10 CFR 72.3, an ISFSI is,

“a *complex* designed and constructed for the interim storage of spent nuclear fuel, solid reactor-related GTCC waste, and other radioactive materials associated with spent fuel and reactor-related GTCC waste storage. An ISFSI which is located on the site of another facility licensed under this part or a facility licensed under part 50 of this chapter and which shares common utilities and services with that facility or is physically connected with that other facility may still be considered independent. (emphasis supplied)

Conclusion

Entergy's unregulated construction of the dry cask storage facility at Pilgrim without regulatory review is highly concerning, unwise, and illegal. Among the most significant issues is the location of the facility in or near a floodplain, subject to coastal flooding and future sea level rise.

The NRC regulations state, “The [ISFSI] facility must be sited to avoid to the extent possible the long-term and short-term adverse impacts associated with the occupancy and modification of floodplains.” 10 CFR 72.90(f). At a minimum, Entergy must submit an environmental report for the facility. 10 CFR 72.34. Entergy cannot rely on the 2005 Environmental Report submitted with its application for the relicensing of Pilgrim. That Report is out of date and does not take in to account any effects of flooding, climate change, or sea level rise on a SNF storage facility.

The NRC must ensure a thorough public review of the “Siting Evaluation Factors” in Subpart E of 10 CFR 72. This includes a thorough investigation and assessment of: the “site characteristics that may directly affect the safety or environmental impact,” 72.90(a); the “frequency and severity of external natural and man induced events that could effect the safe operation, 72.90(b); and, “the potential for radiological and other environmental impacts on the region... with due consideration of the characteristics of the population, including its distribution, and of the regional environs, including its historical and esthetic values.” 72.90(e).

We believe that the NRC should order Entergy to stop work on the SNF storage facility at Pilgrim, and require submittal of the legally required reports, assessments, and licenses before further commitments to location and design are made. We request that the NRC hold a public hearing on these plans.

The NRC's failure to require Entergy to provide information to the agency and the public, as required by 10 CFR Part 72, about its ongoing construction of a “seemingly permanent” ISFSI storage facility at Pilgrim violates the law. It is also reckless, given the NRC's recent experience during Hurricane Sandy, with shut-downs and failures at

nuclear reactors located in the coastal zone. During the historic winter storm Nemo, Pilgrim had an emergency shut down and as of the date of this letter has been running for over 72 hours on back up generators. The oil tanks for these generators are in a coastal zone, subject to flooding, which can cause corrosion and contamination of the oil with sea water.

We request a timely response to this letter. Please send the response to me at meg@ecolaw.biz, 508-259-9154.

Very truly yours,

Signed electronically

Margaret Sheehan, Esq.

For

Pilgrim Coalition, Pilgrim Watch, EcoLaw

Cc:

William Dean
Regional Administrator, Region I
Nuclear Regulatory Commissioner
Via Email to Bill.Dean@nrc.gov

Governor Patrick
Senator Therese Murray
State Senators and Representatives
Town of Plymouth
Rick Sullivan, Secretary, EOEEA
Bruce Carlisle, Mass CZM
Mass Department of Public Health
Ron Bellamy, NRC
Rep. Markey
Rep. Keating
Annette L. Vietti-Cook, Secretary, NRC NRCExecSec@nrc.gov

Mike, Linda

From: Meg Sheehan [meg@ecolaw.biz]
Sent: Tuesday, February 12, 2013 2:54 PM
To: NRCExecSec Resource
Cc: Dean, Bill; Rick Sullivan; Therese Murray; Tom Calter; Rep Vinny DeMacedo; Michal Freedhoff; Michael Jackman Jackman; Bellamy, Ronald; melissa.hoffer@state.ma.us; townmanager-selectmen@townhall.Plymouth.ma.us; Bruce Carlisle; Beth Card; Suzanne Condon
Subject: Pilgrim Nuclear, Plymouth MA - Construction of Nuclear Waste Storage Facility
Attachments: 02.12.13 NRC Letter Storage-1.pdf; ATT00002.htm

Dear NRC Chair Macfarlane,

Attached please find a letter requesting proper NRC oversight of the construction of a high level nuclear waste facility in the coastal zone at the site of the Pilgrim Nuclear Power Station in Plymouth MA.

We note that Pilgrim had an emergency shut down during NEMO and is still off line, operating on generators whose fuel supply is in aging oil tanks, subject to flooding and sea water infiltration.

Please respond to this letter at your earliest convenience.

Thank you for your attention to this matter.

Margaret E. Sheehan
Volunteer, Pilgrim Coalition and
Attorney at Law
meg@ecolaw.biz
cell 508-259-9154