

April 12, 2013

Ms. Margaret Sheehan, Esq.  
Pilgrim Coalition, Pilgrim Watch, EcoLaw  
c/o P.O. Box 380083  
Cambridge, MA 02238

SUBJECT: RESPONSE TO QUESTIONS REGARDING THE U.S. NUCLEAR REGULATORY  
COMMISSION REGULATIONS FOR CONSTRUCTION OF SPENT NUCLEAR  
FUEL STORAGE FACILITY

Dear Ms. Sheehan:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of February 12, 2013, in which you raised concerns regarding the enforcement of NRC regulations for construction of a spent nuclear fuel independent spent fuel storage installation (ISFSI) at the Pilgrim Nuclear Power Station (Pilgrim) in Plymouth, Massachusetts. It appears from your letter that you have two major concerns. The first concern pertains to the NRC's regulatory structure for licensing of an ISFSI. The second concern pertains to the legal issues concerning the storage of spent nuclear fuel at Pilgrim. In addition, you requested a public meeting on this topic. I understand that you have discussed these concerns previously with Mr. Ronald Bellamy of the NRC's Region I Office.

Regarding your first concern of NRC's regulatory structure for licensing of an ISFSI, I would like to first provide you some background material and to clarify the two types of licenses, general and site specific. A general license authorizes storage of spent fuel in casks previously approved by the NRC at a site already licensed to possess fuel to operate a nuclear power plant. General licensees must show the NRC that it is safe to store spent fuel in dry casks at their site. General licensees also review their programs (such as security or emergency planning) and make any changes needed to incorporate an ISFSI at their site. For site specific applications, the NRC reviews the safety, environmental, physical security and financial aspects of the licensee and proposed ISFSI and, if we conclude it can operate safely, we issue a site specific license. This license contains safety requirements and specifies the quantity and type of material the licensee is authorized to store at the site.

Pilgrim may store spent nuclear fuel in an ISFSI under the general license, according to the regulations and provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 72, Subpart K, "General License for Storage of Spent Fuel at Power Reactor Sites." Specifically, 10 CFR § 72.210, "General license issued," states in part, that a general license is issued for the storage of spent fuel in an ISFSI at power reactor sites to persons authorized to possess or operate nuclear power reactors under 10 CFR Part 50 or 10 CFR Part 52. Pilgrim is a 10 CFR Part 50 licensee. As such, under the above regulations, Pilgrim can utilize a certificate of compliance (CoC) for a dry spent fuel storage cask system as long as the system has been approved in 10 CFR § 72.214, "List of Approved Spent Fuel Storage Casks." The CoCs (cask systems) approved for use in 10 CFR § 72.214 have undergone an extensive evaluation by the NRC. In addition, the NRC publishes the proposed CoC design and regulatory requirements in the *Federal Register* with a public comment period of no less than 30 days before final NRC approval. These requirements include license conditions pertaining to the effects of flooding and other hazards, as well as other environmental parameters, including air temperature.

Pilgrim, a 10 CFR Part 50 licensee, intends to utilize the 10 CFR Part 72 general license provision, the NRC does not require it to obtain a site specific license to store spent nuclear fuel. Specifically, 10 CFR § 72.6(a) states that “any general license provided in this part is effective without the filing of an application with the Commission or the issuance of a licensing document to a particular person.” Pilgrim, using the general license provision, is only required to notify the NRC at least 90 days before the first storage of spent fuel in an ISFSI in accordance with 10 CFR § 72.212, “Conditions of General License Issued Under §72.210.” The NRC also requires Pilgrim to perform a site specific evaluation in accordance with 10 CFR § 72.212 to ensure it complies with the conditions of the CoC. It should also be noted that the NRC subjects Pilgrim’s 10 CFR § 72.212 evaluation to an inspection prior to loading of the spent nuclear fuel, as well as performing inspections of the construction and operations of an ISFSI, per NRC Inspection Manual Chapter 2690, “Inspection Program for Dry Storage of Spent Reactor Fuel at Independent Spent Fuel Storage Installations and for 10 CFR Part 71 Transportation Packagings.”

The requirements that you have referenced in 10 CFR § 72.34 and 10 CFR § 72.90 apply only to a site specific ISFSI license in accordance with 10 CFR 72.13(b) and are not applicable to Pilgrim because they are constructing and operating an ISFSI under a general license in 10 CFR § 72.210 pursuant to their operating reactor license under 10 CFR Part 50. A facility holding a 10 CFR Part 50 reactor operating license may perform construction activities associated with an ISFSI under their existing operating programs without prior NRC approval as long as the activities do not require a change to the facility’s technical specifications, and where no unresolved safety questions are identified. Specifically, the NRC will continue to monitor Pilgrim’s progress in the construction and eventual operation of an ISFSI in accordance with our inspection program guidance.

In your letter, you also expressed a concern about the possibility of Pilgrim storing spent nuclear fuel “on a permanent basis,” citing to *State of New York v. Nuclear Regulatory Commission*, 681 F. 3d 471 (D.C. Cir. 2012)). In response to the 2012 D.C. Circuit Court of Appeals decision, the NRC is currently developing a generic environmental impact statement to support an updated decision and rule and intends to issue its final environmental impact statement in August 2014. Please refer to the NRC’s Public Website and the web folder labeled “Waste Confidence Decision,” <http://www.nrc.gov/waste/spent-fuel-storage/wcd.html>, for additional information on this matter. Also, you can find the NRC’s current environmental assessment for storage of spent nuclear fuel in an ISFSI for up to 40 years in the Agencywide Documents Access and Management System under Accession No. ML100710441.

Pilgrim has been in frequent and consistent communication with the NRC’s Region I Office since the beginning of its ISFSI project. Pilgrim has also kept the NRC’s resident inspectors apprised of the ISFSI construction activities. In response to the request from the Board of Selectmen of the Town of Plymouth, Massachusetts, a public briefing on Pilgrim was held on April 2, 2013, which also included discussion related to the ISFSI plans and NRC regulations related to ISFSIs. We believe this satisfies your request for a public meeting.

M. Sheehan

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I appreciate the opportunity to address your concerns regarding the Pilgrim ISFSI. If you have any additional questions about this matter or our licensing process, please contact me or Ms. Michele Sampson of my staff at (301) 492-3292.

Sincerely,

/RA/

Catherine Haney, Director  
Office of Nuclear Material Safety  
and Safeguards

Docket No. : 50-293

cc: Distribution via ListServ

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**ADAMS: Package No.: ML13074A494 Letter No.: ML13074A524**

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<b>NAME:</b>	JGoshen	WWheatley	QTE	MFerdas	CHsu	RGuzman	MSampson
<b>DATE:</b>	3/7/2013	3/ 8 /2013	3/14/13	3/11/2013	3/14/2013	3/8/2013	3/ 11 /2013
<b>OFC:</b>	SFST	SFST	OGC-NLO	NMSS			
<b>NAME:</b>	THsia	MLombard	AGendelman	CHaney			
<b>DATE:</b>	4/4 /2013	4/ 5 /2013	3/ 22 /2013	4/12/2013			

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