



August 23, 2013

Allison Macfarlane, Chairman  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555  
By e-mail to: [Allison.Macfarlane@nrc.gov](mailto:Allison.Macfarlane@nrc.gov)

SUBJECT: *NRC Process for Consideration of Expedited Transfer of Spent Fuel*

Dear Chairman Macfarlane:

On behalf of 26 environmental organizations across the United States<sup>1</sup>, I am writing to express our deep concern about the apparently biased manner in which the NRC Staff is investigating the question of whether the NRC should expedite the transfer of spent nuclear reactor fuel from storage pools into combined low-density storage and dry storage. Our concerns first arose with the publication in June of the deeply flawed Draft Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a US Mark I Boiling Water Reactor (“Draft Consequence Study”). They were greatly exacerbated yesterday during a meeting in which the Staff reneged on its invitation to pose questions regarding the Draft Consequence Study.

We consider the NRC’s continued allowance of high-density pool storage for spent fuel to be one of the most serious unaddressed safety problems affecting nuclear reactors today. The NRC has never evaluated the risks of high-density pool storage of spent fuel with any rigor or thoroughness, and what little analysis it has conducted in recent years has been hidden behind an unjustifiable veil of secrecy. Therefore, after the Fukushima accident and the U.S. Court of Appeals’ decision in *New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2013), we were heartened that the NRC Staff appeared to commit to greater openness and to finally conducting a serious and scientific analysis of the risks of pool fires.

We were appalled, however, by the biased and misleading nature of the Draft Consequence Study that the Staff issued for comment in late June. *See* 78 Fed. Reg. 39,781 (July 2, 2013). As discussed in comments prepared on our behalf by Dr. Gordon Thompson, a pre-eminent expert on pool fire risks, the Draft Consequence Study is not a credible scientific document. While the study purports to be a broad scientific inquiry into pool fire phenomena, in fact it is a very narrowly focused document that ignores basic pool fire phenomena and important pool fire accident contributors. It misleadingly implies that a severe earthquake causing complete

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<sup>1</sup> With Mindy Goldstein of the Turner Environmental Law Clinic, I am counsel in this matter to: Beyond Nuclear, Blue Ridge Environmental Defense League, Center for a Sustainable Coast, Citizens Allied for Safe Energy, Don’t Waste Michigan, Ecology Party of Florida, Friends of the Coast, Friends of the Earth, Georgia Women’s Action for New Directions, Green States Solutions, Hudson River Sloop Clearwater, Missouri Coalition for the Environment, NC WARN, Nevada Nuclear Waste Task Force, New England Coalition, No Nukes Pennsylvania, Nuclear Energy Information Service, Nuclear Information and Resource Service, Nuclear Watch South, Physicians for Social Responsibility, Public Citizen, Riverkeeper, SEED Coalition, San Luis Obispo Mothers for Peace, Sierra Club Nuclear Free Campaign, and Southern Alliance for Clean Energy.

draining of a fuel pool is the primary source of risk to a spent fuel pool, and assumes that open-rack low-density pool storage is not advantageous without even examining it. In short, the Consequence Study appears designed to advance the authors' pre-determined and unsupported conclusion that high-density pool storage is safe.

This appearance of bias was further deepened by your technical staff's behavior in a meeting on August 22. As described in an August 6 notice, the purpose of the meeting was:

to provide external stakeholders with information on the NRC staffs' analysis regarding whether regulatory action is needed to require expedited transfer of spent fuel to dry cask storage, as well as, an opportunity to ask the NRC staff clarifying questions and to provide feedback to NRC staff.

Therefore, I attended the meeting in person and Dr. Thompson and many of our clients participated by telephone and webinar, with the expectation that the Staff members conducting the meeting had read the detailed criticisms by Dr. Thompson, the Union of Concerned Scientists, and others; and that they would be prepared to answer technical questions regarding the significant gaps and inconsistencies in the Draft Consequence Study's analysis of pool fire risks.

Astoundingly, however, the panel of NRC Staff members sitting behind the table in the Commission's meeting room included only one of the ten people listed as "authors" on the study's cover page, Fred Schofer. But Mr. Schofer clarified that he was responsible only for the regulatory analysis in Appendix D, which merely *applied* the results of the technical risk analysis in the body of the Draft Consequence Study. Even more astoundingly, Mr. Schofer and the other members of the NRC Staff panel announced that the purpose of the meeting was only to explain and answer questions about the regulatory analysis in Appendix D. They firmly denied that the Consequence Study itself was a subject of the meeting. Although it is my understanding that at least one author of the Draft Consequence Study was present in the audience, not a single author of the study came to the front of the room or stood to answer questions. The members of the panel behind the table answered our questions about the Draft Consequence Study in the most general and unsatisfying terms.

In addition, although more than 100 people were participating in the meeting by telephone or webinar, much of the 2.5 hour meeting time was taken up by Mr. Schofer's lengthy explanation of a 20-page set of viewgraphs describing in exhaustive detail the Staff's method for conducting the regulatory analysis of the Draft Consequence Study's results. As a result, many questioners waited on hold for long periods to pose their questions. After the meeting, I learned that John Sipos, an assistant attorney general for the State of New York who is Section Chief of the Energy Section of the Environmental Protection Bureau and represents the State in the Indian Point licensing case, waited on hold for an hour and twenty minutes and *never* got an opportunity to ask his questions.

The Staff's refusal to make the Draft Consequence Study a subject of the meeting, combined with a long discourse on viewgraphs of little interest to the public, gave the meeting the distinct



flavor of a staged event designed to manage the public, rather than a forum for an open and rigorous discussion of the issues of concern to the public.

The Commission currently is scheduled to make a decision about expedited transfer of spent fuel from high-density storage pools in October. While we believe this issue should be addressed as soon as possible, the NRC Staff has not come close to preparing a study of adequate technical rigor to permit you to make an informed decision. In fact, to date, the inquiry conducted by the Staff has been fatally compromised by bias and refusal to conduct an open discussion with informed critics and the public. As co-author with Dr. Thompson of a 2003 study of spent fuel storage risks, we know that you understand the importance of this issue and the lack of adequate technical analysis by the NRC in the past. We also know that as a former member of academia, you value the principles of scientific integrity, intellectual rigor and open discourse. Therefore, we call upon you to exercise your supervisory authority over the Staff to demand an unbiased analysis of spent fuel storage risks that complies with basic principles of sound scientific inquiry and is subject to rigorous public debate. Given the importance of the issue and the lack of any previous rigorous technical analysis of spent fuel storage risks, we urge you to use the caliber of the Reactor Safety Study as your benchmark, including the use of peer review in the same manner as the Reactor Safety Study.

Sincerely,

/s/

Diane Curran

Cc: Commissioner Kristine L. Svinicki  
Commissioner George Apostolakis  
Commissioner William D. Magwood, IV  
Commissioner William C. Ostendorff

## Remsburg, Kristy

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**From:** Diane Curran <dcurran@harmoncurran.com>  
**Sent:** Friday, August 23, 2013 9:51 AM  
**To:** CHAIRMAN Resource; Woollen, Mary; Docket, Hearing  
**Cc:** John Sipos (john.sipos@oag.state.ny.us); Janice Dean (Janice.Dean@oag.state.ny.us)  
**Subject:** Letter to the Chairman  
**Attachments:** Curran Letter to Chairman Macfarlane re spent fuel pool study 8-23-13.pdf

Dear Chairman Macfarlane: Attached please find a letter regarding the NRC's process for considering expedited transfer of spent fuel from high-density storage pools.

Thanks, Diane Curran

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