

May 16, 2014

Mr. William E. Griffin  
Chief Assistant Attorney General  
State of Vermont  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609 1001

Dear Mr. Griffin:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter dated January 3, 2014, regarding the expedited transfer of spent fuel to dry cask storage. The NRC appreciates the concerns of the States of Vermont, New York, Massachusetts, and Connecticut, and I thank you for sharing them.

Your letter focused on the environmental impacts of high-density loading of reactor spent fuel pools. In this regard, you stated that the only NRC analysis of such impacts is a 1979 generic environmental impact statement (NUREG-0575). Your letter also requested that an updated analysis of these impacts be performed before the Commission makes any decisions on expedited transfer issues.

As referenced in your letter, the NRC staff sent SECY-13-0112, "Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling-Water Reactor," to the Commission in October 2013 (available in the NRC's Agencywide Documents Access and Management System (ADAMS) under Accession No. ML13256A334). While this study focused on safety issues, it also provided background on previous NRC evaluations of related environmental issues. Such evaluations include the 1996 generic environmental impact statement (GEIS) for reactor license renewals (NUREG-1437). This 1996 GEIS considered the impacts from dense packing for license renewal actions. Further, as discussed in SECY-13-0112, the NRC in 2008 denied petitions for rulemaking -- filed by the Attorney General of the Commonwealth of Massachusetts (PRM-51-10) and the Attorney General for the State of California (PRM-51-12) -- concerning the environmental impacts of high-density storage of nuclear fuel in spent fuel pools, in which the continued validity of the 1996 GEIS analysis was challenged. The basis for denying these rulemaking petitions is documented in the NRC's notice of denial that was published in the *Federal Register* on August 8, 2008 (73 FR 46204). The NRC's denial of these rulemaking petitions was upheld by the United States Court of Appeals, *New York v. NRC*, 589 F.3d 551 (2<sup>nd</sup> Cir. 2009). SECY-13-0112 remains under consideration by the Commission.

The 1996 GEIS analysis, and the bases for the 2008 denial of the Massachusetts and California petitions, were more recently considered by the NRC staff during the process that led to the June 2013 issuance of Revision 1 to NUREG-1437, and its corresponding regulations in Title 10 of the Code of *Federal Regulations* (10 CFR) Part 51 (78 FR 37282, 37325; June 20, 2013). The NRC staff concluded that the onsite storage of spent fuel is still properly classified in 10 CFR Part 51, Appendix B, as a generic Category 1 issue; and Appendix B reflects the NRC

finding that the expected impacts of such storage are small. As a result of these assessments, the Commission has not found, to date, a need to perform an updated analysis of the environmental impacts of high-density storage. I note, however, that the NRC currently has pending before it a February 18, 2014, petition for rulemaking requesting that changes be made to NRC regulations governing the environmental impacts of high-density spent fuel storage. This petition includes a request to further revise Revision 1 to NUREG-1437.

Additionally, the NRC is currently evaluating the environmental impacts of spent fuel storage after the term of a reactor's licensed life through the Waste Confidence rulemaking. The draft final rule is scheduled to be provided for Commission consideration later this year and is scheduled to be completed in the fall of 2014. I understand that several States have submitted comments on the draft Waste Confidence GEIS and proposed rule. These comments will be considered as part of the staff's recommendations to the Commission on the draft final rule.

The NRC strives to conduct its regulatory activities in an open and transparent manner and values input from State governments. As you mentioned in your letter, the NRC staff recently provided a generic regulatory analysis of the expedited transfer issue to the Commission on November 12, 2013 (COMSECY-13-0030, "Staff Evaluation and Recommendation for Japan Lessons Learned Tier 3 Issue on Expedited Transfer of Spent Fuel," (ADAMS Accession No. ML13273A601)). During the development of this COMSECY, as with the development of the related October 2013 spent fuel pool study referenced above, the NRC staff held public meetings to solicit public comments on August 22, 2013, and September 18, 2013. The Commission meeting for this topic on January 6, 2014, included presentations from stakeholders with various views on the safety of spent fuel pools and the need for expedited transfer. Comments received by the NRC staff were evaluated and considered as part of the staff's assessment and recommendations for the expedited transfer issue. At this time, COMSECY-13-0030 remains under consideration by the Commission.

I thank you for your continued involvement on these topics. Please feel free to contact me if you have further questions or concerns.

Sincerely,

*/RA/*

Allison M. Macfarlane

Identical letter sent to:

Mr. William E. Griffin  
Chief Assistant Attorney General  
State of Vermont  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609 1001  
[BGriffin@atg.state.vt.us](mailto:BGriffin@atg.state.vt.us)

Lemuel M. Srolovic  
Bureau Chief  
Environmental Protection Bureau  
New York State Attorney General  
146 State Street, 2<sup>nd</sup> Floor  
Albany, New York 12224  
[lemuel.srolovic@ag.ny.gov](mailto:lemuel.srolovic@ag.ny.gov)

Darren M. Springer  
Deputy Commissioner  
State of Vermont  
Department of Public Service  
112 State Street  
Montpelier, Vermont 05602  
cc: Anthony Z. Roisman, Counsel

Matthew Brock  
Assistant Attorney General  
Commonwealth of Massachusetts  
Office of the Attorney General  
One Ashburton Place  
Boston, Massachusetts 02108  
[matthew.brock@state.ny.us](mailto:matthew.brock@state.ny.us)

Robert Snook  
Assistant Attorney General  
Office of the Attorney General  
55 Elm Street, P.O. Box 120  
Hartford, Connecticut 06106  
[robert.snook@ct.gov](mailto:robert.snook@ct.gov)