

**POLICY ISSUE**  
**(Information)**

February 28, 2014

SECY-14-0025

FOR: The Commissioners

FROM: Mark A. Satorius  
Executive Director for Operations

SUBJECT: WASTE CONFIDENCE—CONTINUED STORAGE OF SPENT  
NUCLEAR FUEL PROPOSED RULE: PUBLIC FEEDBACK ON  
SPECIFIC ISSUES

PURPOSE:

The purpose of this paper is to summarize comments the U.S. Nuclear Regulatory Commission (NRC) staff received in response to the four issues on which the Commission specifically sought comment in conjunction with the proposed Waste Confidence Rule. This paper also identifies common topics raised in the comments submitted on the proposed rule and draft Generic Environmental Impact Statement (GEIS).

SUMMARY:

As directed by the Commission in the staff requirements memorandum (SRM) for SECY-13-0061, "Proposed Rule: Waste Confidence—Continued Storage of Spent Nuclear Fuel," the NRC asked for public comment on four specific issues. The NRC staff received a large number and a wide variety of comments on the proposed Waste Confidence Rule and draft GEIS.

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Commenters included Tribal governments<sup>1</sup>, State governments<sup>2</sup>, industry groups<sup>3</sup>, advocacy groups<sup>4</sup>, and individuals. The U.S. Environmental Protection Agency (EPA) also provided comments under its authority to review environmental impact statements.<sup>5</sup> In response to the four issues, commenters expressed support for removing statements from the rule regarding the timeline for repository availability and supported retaining a statement regarding the safety of continued spent nuclear fuel storage. With respect to whether the NRC should streamline the statements of consideration and rule, about an equal number of commenters supported and opposed this change. Finally, commenters expressed nearly universal support for changing the title of the rule.

#### BACKGROUND:

In the SRM for SECY-13-0061 (August 5, 2013), the Commission directed the staff to “develop, and insert into the draft *Federal Register* notice questions, soliciting public comments” on four issues, as follows:

- (1) Whether specific policy statements regarding the timeline for repository availability should be removed from the rule text (“Issue 1”).
- (2) Whether specific policy statements regarding the safety of continued spent fuel storage should be made in the rule text given the expansive and detailed information in the draft GEIS (“Issue 2”).
- (3) Whether it would improve clarity for NRC to streamline the statements of consideration and rule by removing the content that is merely repeated from the draft GEIS (“Issue 3”).
- (4) Whether the title of the rule should be changed in light of a GEIS being issued instead of a separate Waste Confidence Decision (“Issue 4”).

The staff included these four issues in Section IV of the *Federal Register* notice for the proposed rule.<sup>6</sup>

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<sup>1</sup> See, for example, comments from the Prairie Island Indian Community (PIIC). See Agencywide Documents Access and Management System (ADAMS) Accession No. ML14014A319 for comments from PIIC, and ML13365A345 for comments jointly submitted by PIIC and the States of New York, Vermont, Connecticut, and the Commonwealth of Massachusetts.

<sup>2</sup> In addition to the joint comments identified in footnote 1, other comments from State governments include, for example, the State of Arkansas Department of Health (ML14015A083), the State of South Carolina’s Governor’s Nuclear Advisory Council (ML13329A938), the State of New York’s additional comments (ML13361A000), and the State of Vermont’s additional comments (ML14006A368).

<sup>3</sup> For examples, see comments from the Nuclear Energy Institute (ML14001A002) and the Decommissioning Plant Coalition (ML13358A384).

<sup>4</sup> These include, but are not limited to, Natural Resources Defense Council (ML13360A365), multiple Sierra Club organizations (whose members, affiliates, or allies also generated approximately 22,000 form letters), and a group of 33 environmental organizations represented by attorney Diane Curran (ML14030A152). Other examples are available upon request.

<sup>5</sup> 42 U.S.C. § 7609 (2013). See Comments of Susan E. Bromm, Director of EPA’s Office of Federal Activities, ML14016A089.

<sup>6</sup> Proposed Rule, Waste Confidence—Continued Storage of Spent Nuclear Fuel, 78 FR 56775, 56799.

From September 13, 2013, through December 20, 2013<sup>7</sup>, the NRC solicited and received public comments through multiple avenues, including listening to and receiving:

- Verbal and written comments at 13 public meetings held at locations throughout the United States.
- Written comments through electronic means including e-mail, the Federal Rulemaking Web site at [www.regulations.gov](http://www.regulations.gov), fax, and mailed electronic media.
- Written comments through conventional mail.
- Written comments hand-delivered to NRC headquarters.

The comment period was initially planned to end on November 27, 2013, but the NRC extended the comment period to December 20, 2013, in response to the October 2013 government shutdown, which caused the agency to reschedule Waste Confidence public meetings. Public meetings were held at NRC headquarters (three total: two with in-person and teleconferenced attendees; one with only teleconferenced attendees); Denver, Colorado; Chelmsford, Massachusetts; Tarrytown, New York; Charlotte, North Carolina; Orlando, Florida; Oak Brook, Illinois; Carlsbad, California; San Luis Obispo, California; Perrysburg, Ohio; and Minnetonka, Minnesota. In sum, approximately 1,400 individuals attended at least one of the Waste Confidence public meetings during the comment period, and nearly 500 individuals provided oral statements.

To focus attention on the four issues, the staff highlighted them in the narrative that accompanied its presentation at each public meeting. In addition, the staff provided copies of the proposed rule to attendees at all meetings, and it developed a single-page, single-sided handout that specifically identified and presented the four issues. The handout was also available on the NRC Waste Confidence Web site.

In response to efforts to solicit public input, a wide array of interest groups and individuals participated. The staff has received more than 33,000 items of correspondence and recorded more than 1,600 pages of transcribed comments on the proposed Waste Confidence Rule and draft GEIS. Approximately 32,000 of the 33,000 submitted items of correspondence were “form” letters. Of these 33,000 total items and 1,600 pages of transcripts, approximately 1,500 unique submissions (oral and written) were identified, which resulted in nearly 9,000 unique comments<sup>8</sup> on the draft GEIS and proposed rule. At this time, the staff is thoroughly reviewing, considering, and responding to these comments, and then will work to modify the GEIS and rule, as necessary.

All public comments have been catalogued, grouped, and summarized. The staff will develop responses to all timely public comments and make any necessary changes to the draft GEIS and rule in the next few months. The staff continues to make every effort to deliver a high-quality draft final GEIS and rule for Commission review to support publication of the rule in the fall of 2014.

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<sup>7</sup> 78 FR 66858.

<sup>8</sup> The term “comment” refers to a specific issue raised by a commenter. Many items of correspondence raise more than one issue, so the number of comments (nearly 9,000) exceeds the number of unique submissions (approximately 1,500).

DISCUSSION:

Public comments on the four issues are discussed in detail below:

*Issue 1: Whether specific policy statements regarding the timeline for repository availability should be removed from the rule text*

Issue 1 involves the question whether the Waste Confidence Rule should include an expected date for a repository to become available. Commenters<sup>9</sup> who responded to Issue 1 generally expressed support for removing a statement regarding the repository availability timeline from the rule. Reasons cited for this support varied, but commonly included a lack of NRC control over repository timelines and previous failures in accurately predicting when a repository would become available. Commenters also noted that a timeline should not be included because: it is unnecessary to provide a repository timeline in an environmental impact statement, “when necessary” is a more appropriate statement, siting a repository is impossible, and including a statement about repository availability ties the United States to repository disposal of spent fuel to the exclusion of other disposal options, such as reprocessing.

The commenters who expressed support for retaining a statement regarding the timeline for repository availability stated that: having a timeline for repository availability in the rule affirms the importance of repository disposal, and the timeline is an important element of a “contract” that the commenter asserted the public has with the nuclear industry. One commenter who expressed support for retaining a timeline for repository availability did not provide supporting rationale.

*Issue 2: Whether a specific policy statement regarding safety of continued storage should be made in the rule text*

Issue 2 pertains to the question whether a specific statement regarding the safety of continued spent fuel storage should be made in the rule, in view of the fact that the NRC now has prepared a generic determination on the environmental impacts of continued storage. As noted in the proposed rule, the GEIS does not provide a safety analysis for storage; rather, a safety evaluation would still be required to support approval of a new cask design, to support a site-specific license for dry storage, or to store spent fuel in a spent fuel pool.

Commenters<sup>10</sup> who responded to Issue 2 generally expressed support for a policy statement regarding safety of continued storage in the rule text, citing a wide variety of rationales. Some

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<sup>9</sup> Commenters included Robert Vandenbosch, in ML13269A414; David A. Pelletier, UA Local 131, in ML13312A354; Susan Shapiro, Radiation Public Health Project, in meeting transcript ML13318A129; Ryan Brookhart, in meeting transcript ML13323B474; the South Carolina Governor’s Nuclear Advisory Council, in ML13329A938; John Greenwood, in meeting transcript ML13340A572; New York, Vermont, Connecticut, Massachusetts, and the Prairie Island Indian Community, in ML13365A345; Janet Kotra, in ML13353A729; the Nye County Nuclear Waste Repository Project Office, in ML13354A007; David Schonberger, in ML13357A316; the Prairie Island Indian Community, in ML14014A319; the Nuclear Energy Institute, in ML14001A002; G. Corrino, in ML14006A448; and the Arkansas Department of Health, in ML14015A083.

<sup>10</sup> Commenters included Robert Vandenbosch, in ML13269A414; Ryan Brookhart, in meeting transcript ML13323B474; the South Carolina Governor’s Nuclear Advisory Council, in ML13329A938; Ohio State Construction Trades, in meeting transcript ML13340A572; John Greenwood, in meeting transcript ML13340A572; the Affiliated Construction Trades Foundation of Ohio, in meeting transcript ML13340A572; New York, Vermont, Connecticut, Massachusetts, and the Prairie Island Indian Community, in ML13365A345; Janet Kotra, in ML13353A729; David Schonberger, in ML13357A316; the Prairie Island Indian Community, in ML14014A319; the Nuclear Energy Institute, in ML14001A002; G. Corrino, in ML14006A448; and the Arkansas Department of Health, in ML14015A083.

commenters noted that including a statement about safety would enhance openness and transparency, or would indicate that storage is, in fact, safe. Others indicated that a safety statement should be included because: such a statement would “give people that are opposed to industry basis to make opposition,” it appropriately addresses the issues raised in *Minnesota v. NRC*<sup>11</sup> and *New York v. NRC*<sup>12</sup>, or safety determinations are more important to NRC decisions and to members of the public in spent fuel matters than environmental issues are. One commenter who expressed support for the policy statement indicated that the statement could appear in the Statements of Consideration rather than in the rule text.

Commenters who expressed opposition to making a policy statement regarding safety of continued storage in the rule text provided several reasons, including: providing such a statement is unnecessary in the rule, the GEIS is unable to support such a statement, and it is not possible to project the future safety of spent fuel storage.

One commenter neither supported nor opposed Issue 2, but asserted that technical issues identified as part of the NRC’s Long-Term Waste Confidence Update must be resolved before NRC issues the final GEIS.

*Issue 3: Whether the Discussion portion (Section III) of the Statements of Consideration should be streamlined by removing content that is repeated from the draft GEIS*

Issue 3 involves the question whether the Statements of Consideration can be clarified by removing material that is repeated in the draft GEIS. Commenters<sup>13</sup> who responded to Issue 3 were split on this issue. Some commenters expressed support for streamlining the Discussion portion of the Statements of Consideration while others opposed such streamlining. Commenters who supported streamlining did so most commonly because it would improve clarity or reduce redundancy. Other commenters suggested that lengthy *Federal Register* notices are burdensome to search, and that streamlining could remove anachronisms.

Most commenters who opposed streamlining indicated either that the information in the Discussion section supports the rule, or it provides a plain-language explanation of matters in the rule. Other commenters who opposed streamlining stated that it would introduce changes upon which the public would not have an opportunity to comment. Additionally, some commenters indicated that the Statements of Consideration should address findings that the NRC has historically included as part of the Waste Confidence decision. Finally, one commenter stated that the *Federal Register* is more readily available and easier to search than the GEIS.

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<sup>11</sup> 602 F.2d 412 (D.C. Cir. 1979).

<sup>12</sup> 681 F.3d 471 (D.C. Cir. 2012).

<sup>13</sup> Commenters included Robert Vandenbosch, in ML13269A414; Ryan Brookhart, in meeting transcript ML13323B474; the South Carolina Governor’s Nuclear Advisory Council, in ML13329A938; Nikohl Vandel, in meeting transcripts ML13339A946 and ML13345B014; David Schonberger, in meeting transcripts ML13340A572 and in ML13357A316; John Greenwood, in meeting transcript ML13340A572; the Affiliated Construction Trades Foundation of Ohio, in meeting transcript ML13340A572; New York, Vermont, Connecticut, Massachusetts, and the Prairie Island Indian Community, in ML13365A345; Janet Kotra, in ML13353A729; the Nye County Nuclear Waste Repository Project Office, in ML13354A007; the Nuclear Energy Institute, in ML14001A002; G. Corrino, in ML14006A448; and the Arkansas Department of Health, in ML14015A083.

*Issue 4: Whether the title of the rule should be changed in light of a GEIS being issued instead of a separate Waste Confidence Decision*

Commenters<sup>14</sup> who responded to Issue 4 expressed near-unanimous support for changing the title of the rule.<sup>15</sup> Commenters provided an array of reasons to support changing the rule name, including: the name is an anachronism, it provides no useful description of the rule's purpose or intent, historical findings of confidence in the availability of a disposal site have proven incorrect, confidence in the ability to manage or dispose of waste does not now exist, the 2012 ruling from the Court of Appeals for the District of Columbia Circuit invalidated confidence as a basis for the rule, the term "waste confidence" is not meaningful without an explanation of how the term originated, and "confidence" requires transfer of all fuel to dry casks. One commenter who responded to this issue expressed opposition to revising the title. This commenter asserted that removing the term "waste confidence" would be short-sighted because the term ties the rule to the need to establish basic confidence in ultimate waste disposal.

Many other commenters—who did not specifically comment on Issue 4—expressed views related to the use of the term "waste confidence." Those commenters indicated that "waste confidence" is an "oxymoron," the term does not describe the rule's purpose, or it refers to confidence in a repository that the commenters indicated was misplaced based on experiences with Yucca Mountain or with other attempts to dispose of nuclear materials.

Themes from Comments on Proposed Rule and Draft GEIS

Commenters most frequently raised concerns about perceived inadequacies in the draft GEIS and proposed rule. General themes from these comments include:

- doubts or concerns about the feasibility of safe spent fuel storage
- concerns about the NRC's misplaced reliance on repository availability
- concerns that the NRC unreasonably constrained the potential alternatives to Waste Confidence
- inadequate consideration of accidents in the course of continued storage
- insufficient consideration of the costs of long-term spent-fuel storage
- inadequate consideration of the potential environmental impacts from a loss of institutional controls or regulatory oversight

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<sup>14</sup> Commenters included Richard Andrews, in ML13294A563, ML13360A317, and meeting transcript ML13282A605; Mike Kalas, in meeting transcript ML13330C033; Ellen Ginsburg, in meeting transcript ML13330B840; Karen Patterson, South Carolina Governor's Nuclear Advisory Council, in ML13329A938; Nikohl Vandell, in meeting transcripts ML13339A946 and ML13345B014; Paul Padot, in meeting transcript ML13340A572; New York, Vermont, Connecticut, Massachusetts, and the Prairie Island Indian Community, in ML13365A345; Janet Kotra, in ML13353A729; David Schonberger, in ML13357A316; Areva, Inc., in ML14001A009; The Nuclear Energy Institute, in ML14001A002; G. Corriano, in ML14006A448; Bernard Bevell, Arkansas Department of Health, in ML14015A083; and Exelon Generation Company, LLC, in ML14008A173.

<sup>15</sup> Three commenters suggested that the NRC revise the names of the rule and GEIS to be "Storage of Spent Nuclear Fuel after Licensed Term of Operation" and "Generic Environmental Impact Statement for the Storage of Spent Nuclear Fuel after Licensed Term of Operation," respectively.

- inadequate consideration of measures to mitigate impacts from continued storage
- inadequate consideration of site-specific conditions that commenters claim undermine the NRC's generic approach to Waste Confidence
- inadequate consideration of climate change
- inadequate consideration of the potential for human-performance failures during continued storage
- concerns about the validity of various analytical assumptions used in the draft GEIS (for example, the use of a dry-transfer system to move fuel into replacement casks—or the assumed 100-year replacement interval for dry casks and canisters, pads, and transfer systems—among other assumptions)
- improper consideration of issues with impacts that vary according to site-specific factors (e.g., impacts to historic and cultural resources range from small to large in the long-term and indefinite timeframes)
- inadequate consideration of—or inability to ensure—long-term financial capacity to maintain safe spent-fuel storage
- inadequate consideration of issues related to high-burnup spent-fuel management

At this time, the staff is reviewing the comments and preparing responses and has not yet made a determination regarding which, if any, portions of the GEIS and rule will be revised. Some of the above-noted issues are related to other activities currently under Commission review. For example, many commenters requested that the NRC consider expedited transfer of spent fuel from pools to dry casks as part of Waste Confidence. In addition, the staff expects to provide an expanded discussion of some specific issues in the final rule package that will be provided for the Commission's review. These may include, for example, potential loss of institutional controls and safety and environmental issues associated with high-burnup spent-fuel management.

#### CONCLUSION:

The NRC succeeded in attracting a large number of diverse public comments on the Waste Confidence proposed rule and draft GEIS, including the four issues. The staff is evaluating these comments and will recommend responses in the package supporting the draft final GEIS and rule.

The Commissioners

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COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

**/RA/**

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COORDINATION:

The Office of the General Counsel has reviewed this paper and has no legal objection.

**/RA/**

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