

John Beling
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General
One Ashburton Place, 18th Floor
Boston, MA 02108

Dear Mr. Beling:

I am responding to the Commonwealth of Massachusetts' submittal of June 2, 2011 (Accession No. ML12254A005 in the NRC's Agencywide Document Access and Management System (ADAMS)), in which Massachusetts requested that the U.S. Nuclear Regulatory Commission (NRC) amend its regulations at § 51.71(d) of Title 10 of the *Code of Federal Regulations* (10 CFR), "Draft Environmental Impact Statements—Contents," and 10 CFR Part 51, Subpart A, Appendix B, "Environmental Effect of Renewing the Operating License of a Nuclear Power Plant." Specifically, the Commonwealth requested that the NRC rescind its regulations excluding site-specific consideration of spent fuel pool storage impacts from license renewal environmental reviews.

The submittal was a request for a waiver during a legal proceeding related to the Pilgrim Nuclear Power Plant license renewal. In the waiver request, the Commonwealth asked that, should the waiver be denied, that the agency review it as a petition for rulemaking. The Atomic Safety and Licensing Board denied the waiver on November 28, 2011 (ADAMS Accession No. ML11332A152). Subsequently, the Commission referred the submittal to the NRC staff as a petition for rulemaking in a Commission Memorandum and Order dated March 8, 2012, CLI-12-06 (ADAMS Accession No. ML12068A187). The NRC docketed the petition as PRM-51-29 and published a notice of receipt in the *Federal Register* on December 19, 2012 (77 FR 75065). Subsequently, the NRC published a notice providing supplemental information on December 31, 2012 (77 FR 76952). The NRC did not request public comment on the petition for the following two reasons: 1) sufficient information was available for the NRC staff to form a technical opinion regarding the merits of the petition, and 2) the petition was essentially identical to a petition submitted by the Commonwealth on August 25, 2006 (PRM-51-10, ADAMS Accession No. ML062640409).

The NRC has determined that the petition has not provided an adequate basis upon which the NRC would act to amend its regulations as requested. The NRC is therefore denying the petition. The reasons for the denial, outlined in this letter, are also discussed in detail in the enclosed notice, which will be published in the *Federal Register*.

The petition asserted that the events at the Fukushima Dai-ichi nuclear power plant in Japan provided new and significant information showing that the impacts from spent fuel storage are understated in the NRC's Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants analysis and that the GEIS should address spent fuel impacts on a

site-specific basis. However, the spent fuel pools at the Fukushima Dai-ichi site did not experience significant damage. Furthermore, the events at Fukushima Dai-ichi nuclear power plant did not provide information that would materially alter the conclusions in the GEIS or its underlying assumptions. The events also do not constitute new and significant information under the NRC's regulations for implementing the National Environmental Policy Act at 10 CFR Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions."

The petition argued that the Fukushima Dai-ichi events challenged the conclusions reached by the NRC in the denial of Commonwealth's 2006 petition, PRM-51-10 (ADAMS Accession No. ML062640409; denied on August 8, 2008, 73 FR 46204), on the effectiveness of mitigation measures. However, the Fukushima Dai-ichi event did not provide new and significant information related to the effectiveness of the mitigation measures implemented after the September 11, 2001, terrorist attacks for spent fuel pools. As noted above, the spent fuel pools did not experience significant damage.

Finally, the petition argued that the Fukushima Dai-ichi events demonstrated that environmental impacts could be significant and require plant-specific review, challenging the NRC's generic findings with respect to the environmental impacts of onsite spent fuel storage. Based on the agency's current knowledge of the Fukushima Dai-ichi events, they do not constitute new information that would significantly alter the NRC's evaluation of the environmental impacts of severe accidents from the severe accident parameters analyzed in the license renewal GEIS. Consequently, the NRC concludes that the petition has not provided an adequate basis upon which the NRC would act to amend its regulations, as requested.

The NRC considers this petition closed.

You may direct any questions regarding this matter to Jenny Tobin, by calling 301-415-2328 or by e-mailing Jennifer.Tobin@nrc.gov.

Sincerely,

Annette L. Vietti-Cook
Secretary of the Commission

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