

## NRC Staff Attachment 1 - Redline-Strike-Out Excerpts of CRAFT's Reply

*Dominion Nuclear Connecticut, Inc.* (Millstone Nuclear Power Station, Units 2 and 3), CLI-05-24, 62 NRC 551, 565, & no. 60 (2005); *California v. Federal Energy Regulatory Commission*, 329 F.3d 700,707 (9<sup>th</sup> Cir. 2003) “Publication in the *Federal Register* is legally sufficient notice to all interested or affected persons regardless of actual knowledge or hardship resulting from ignorance, except those who are legally entitled to personal notice.” (p.21)

How cavalier is that? Does Staff assume all the world reads the Federal Register cover to cover daily to be cognizant of what the colonists’ plan to do next? We put forth the NRC cannot exclude the WIFN, who not only represents their members on the island and are in Proximity of the Fermi site, but they also many others living in the United States. Two of the individuals allowed Standing by the Staff were James Aquash, a WIFN tribal member, and Russ Blackbird, a WIFN tribal member whose resident address is the reservation, within the 50 mile evacuation zone. Why then, has Staff recommended the decline the tribal government Intervenor status?

Staff also goes on to state, “As the Licensing Board in the Fermi 3 COL proceeding recently explained in response to a contention submitted on behalf of WIFN, § 51.28(a)(5) is limited by the fact that the NRC’s NEPA regulations “do not apply to ... any environmental effects which NRC’s domestic licensing and related regulatory functions may have upon the environment of foreign nations.” *Detroit Edison Co.* (Fermi Nuclear Power Plant, Unit 3), LBP-12-12, 75 NRC 742, 754-55 (2012). CRAFT asserts that Staff does not understand that WIFN is not a “foreign country”, but rather a sovereign nation with government-to-government status with the United States government.

~~Staff and DTE state CRAFT has taken no issuance with DTE’s ER. We take issue with their statement (ER, p.4-60) that “There are no location-dependent disproportionate impacts affecting minority and low-income populations. (NRC 2013c, Section 5.5.2.5) ...” Thus, no~~

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~~disproportionate impact on minority or low-income populations would occur from the proposed action of renewing the Fermi 2 OL.” Environmental Justice is an Applicable Category 2 Issue to Fermi 2 and its proposed continuing operations, and that seems to be the issue of law validating this contention.~~

Since 1794, Aboriginal Peoples have been guaranteed the right to trade and travel between the United States and Canada, which was then a territory of Great Britain. This right is recognized in Article III of the Jay Treaty, also known as the Treaty of Amity, Commerce and Navigation of 1794 and subsequent laws that stem from the Jay Treaty. The NRC cannot no more exclude WIFN from these proceedings than the U.S. Government can exclude WIFN members from entry into the United States, or make them register for the military, or obtain a green card (Form I-551) to work. Neither does the United States government have the right to deport WIFN members. They are eligible for American benefits such as Medicaid, Supplemental Security Income (SSI), Medicare, Unemployment Benefits and other public services.

On February 11, 1994, President Bill Clinton signed into law Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.” In this Order, the law requires in Section 2-2, “Each Federal agency shall conduct its programs, policies, and activities that substantially affect human health or the environment, in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under, such programs, policies, and activities, because of their race, color, or national origin.”

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effectively address the Petitioner's concerns. First, a section 2.206 petition is granted very rarely to an extent that implies agency bias and misconduct. Even if granted, the hearing rights available to the public are inadequate, and NRC rules preclude appeal of 2.206 decisions. Second, a 10 CFR 2.802 rulemaking petition does not provide a realistic, credible, timely, available and accessible way for the public to challenge a license renewal application, so, therefore, for many reasons, any suggestion or reference to this avenue is an attempt to evade AEA and NEPA requirements for meaningful review of legitimate safety and environmental concerns.

~~In addition and in support of CRAFT CONTENTION NUMBER 3: NRC CANNOT LEGALLY EXTEND REACTOR LICENSES CRAFT incorporates by reference and realleges herein as its reply the Initial statements made August 18, 2014 regarding CONTENTION 3: LACK OF SITE-SPECIFIC SAFETY AND ENVIRONMENTAL FINDINGS REGARDING STORAGE AND DISPOSAL OF SPENT FUEL as put forth by Don't Waste Michigan, Beyond Nuclear and Citizen Environment Alliance of Southwestern Ontario in the Initial Petition. Further CRAFT incorporates by reference and realleges herein as its reply all germane subsequent filings including Don't Waste Michigan, Citizens Environment Alliance of Southwestern Ontario and Beyond Nuclear reply of September 19, 2014. CRAFT is aware of September 19, 2014 NRC rulings and filings pertaining to Spent Fuel Storage and contends that this matter has not been resolved and reserves the right to supplement the record in a timely manner as proceedings unfold.~~

***CRAFT Contention 4: Fermi 2 Transmission Corridor Offsite AC Power Supply***

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offsite power systems are actually fundamentally inclusive considerations for the ability to make an accurate determination of reasonable assurance of safety during the renewal term of Fermi, Unit 2. Thus, the Petitioner's *Supporting Statement* included as part of the proposed *Contention* reasonably puts forth from the public record a relevant analysis from an expert/specialist in nuclear power plant electrical systems (CORRECTION - clerical/typographical error - In Farouk D. Baxter's excerpted statement, the Petitioner intended to add emphasis to the word *separate*.). The expert's statement *refutes* the Applicant's NRC Staff-endorsed position that the Fermi, Unit 2 off-site power systems are *separate* and "physically independent preferred off-site power sources." (Applicant's Answer re: LRA content discussion, footnote 122, p. 31). As explained above, CRAFT's contention is based on an underlying premise that the determination of reasonable assurance of safety during the renewal term of Fermi, Unit 2 cannot be genuinely established without correcting the CLB and AMP flaws embedded within the LRA as a prerequisite for approval. CRAFT *contends* that any assertion to the contrary is, by definition, demonstrably false; therefore, CRAFT stands by the proposed contention and requests a hearing from the Board.

~~In addition and in support of CRAFT CONTENTION NO. 4: ENRICO FERMI UNIT 2 TRANSMISSION CORRIDOR OFFSITE AC POWER SUPPLY, CRAFT incorporates by reference and re-alleges herein as its reply the Initial statements made August 18, 2014 regarding CONTENTION 4: INSUFFICIENT SEVERE ACCIDENT MITIGATION ANALYSIS (SAMA) OF POTENTIAL FERMI 2 AND 3 COMMON-MODE FAILURES AND MUTUALLY EXACERBATING CATASTROPHES as put forth by Don't Waste Michigan, Beyond Nuclear and Citizen Environment Alliance of Southwestern Ontario in the Initial Petition. Further CRAFT incorporates by reference and re-alleges herein as its reply all germane subsequent filings~~

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~~including Don't Waste Michigan, Citizens Environment Alliance of Southwestern Ontario and Beyond Nuclear reply of September 19, 2014.~~

### ~~**CRAFT Contention 5: Spent Fuel Pool Instrumentation is Deficient**~~

~~In support of CRAFT CONTENTION NO. 5: SPENT FUEL POOL INSTRUMENTATION IS DEFICIENT, CRAFT incorporates by reference and re-alleges herein as its reply the Initial statements made August 18, 2014 regarding CONTENTION 2: INADEQUATE CONSIDERATION UNDER NEPA OF DENSELY PACKED SPENT FUEL STORAGE POOLS as put forth by Don't Waste Michigan, Beyond Nuclear and Citizen Environment Alliance of Southwestern Ontario in the Initial Petition. Further CRAFT incorporates by reference and realleges herein as CRAFT reply all germane subsequent filings including Don't Waste Michigan, Citizens Environment Alliance of Southwestern Ontario and Beyond Nuclear reply of September 19, 2014.~~

### ~~**CRAFT Contention 6: Mitigation Strategies for Beyond-Design-Basis External Events**~~

~~In support of CRAFT CONTENTION NO. 6: MITIGATION STRATEGIES FOR BEYOND-DESIGN-BASIS EXTERNAL EVENTS, CRAFT incorporates by reference and realleges herein as its reply the Initial statements made August 18, 2014 regarding CONTENTION 1: INADEQUATE SAMA ANALYSIS OF MARK I BWR VULNERABILITIES as put forth by Don't Waste Michigan, Beyond Nuclear and Citizen Environment Alliance of Southwestern Ontario in the Initial Petition. Further CRAFT incorporates by reference and re-alleges herein as its reply germane subsequent filings including Don't Waste~~

~~Michigan, Citizens Environment Alliance of Southwestern Ontario and Beyond Nuclear  
reply of September 19, 2014.~~

***CRAFT Contention 7: Aging Management Plan Does Not Adequately Inspect and Monitor  
for Leaks***

The Applicant (Answer, pp. 37 - 40) alleges that the Petitioner CRAFT's "proposed contention is wholly unsupported." (*Id.*, p. 38). The Applicant alleges, in part, that "CRAFT does not cite to any portion of the license renewal application, nor does it identify any specific portion of the AMP that is alleged to be deficient. . . . Rather than identify, with *specificity*, the alleged inadequacies with the AMP, CRAFT simply alleges that 'more' must be done [i.e., 'a more robust inspection system']." (Emphasis added); (*Id.*). Furthermore, the Applicant alleges that "several assumptions underlying CRAFT's claims are simply incorrect [including lack of cathodic protection]" (*Id.*) and that CRAFT "fails to recognize the existence of other AMPs that apply to areas that CRAFT alleges must be addressed [including the Diesel Fuel Monitoring AMP and the Fire Water System AMP]." (*Id.*, p. 39). Therefore, the Applicant concludes, CRAFT's proposed contention "fails to demonstrate a genuine dispute with the application." (*Id.*, p. 40).

Notably, however, although the Applicant repeatedly asserts that no genuine dispute has been established by the Petitioner pertaining to specific deficiencies of the LRA, conspicuously *absent* from this particular section of the Applicant's Answer (pp. 37 - 40) is any usual or expected mention or declaration by the Applicant of the proposed contention's *inadmissibility*. CRAFT addresses this glaringly revealing and retreating omission below and challenges the above alleged lack of *specificity* while refuting the Applicant's analysis pertaining

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Petitioner's reassert original position and again request a public hearing to examine the impact of daily thermal discharges from Fermi 2 as an accelerator and contributor to harmful algal blooms (HABS). The Fermi 2 releases 45 million gallons of water per day into Lake Erie. This thermal discharge averages 18 degrees (F) above ambient lake temperature 365 days per year.

Petitioner's contend that the Applicant's Environmental Report (ER) fails to consider new and updated environmental and public health data, unavailable at the time of issuance of the original Operating License; further, the Petitioner contends that the Applicant fails to adequately consider Mitigation Alternatives which could significantly reduce the alleged significant environmental and public health impact of Fermi, Unit 2 operations. Therefore, the Petitioner invokes NEPA requirements and contends that further analysis is called for.

Illustration: Petitioner puts forth the following NOAA Satellite Image of Lake Erie from August 10, 2014,

<http://coastwatch.glerl.noaa.gov/webdata/cwops/html/modis/modis.php?region=e&page=1&template=sub&image=a1.14222.1852.LakeErie.143.250m.jpg> to illustrate how severe the algal bloom crisis has become.

~~Additional satellite imagery provided in this reply shows the severity of the Algae Blooms in current times in near proximity to Fermi 2 and just south at Monroe Power Plant. DTE has argued that assessments done in 2008, and 2011 hold today. Current satellite imagery shows a much exacerbated algae bloom problem than is acknowledged in the ER.~~

~~<http://www.bing.com/images/search?q=lake+erie+algae+bloom+thermal&qvrt=lake+erie+algae+bloom+thermal&FORM=IGRE#view=detail&id=824FC0199D4645A1712198261300BA6A019690E0&selectedIndex=575>~~

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~~The year round thermal discharge from Fermi 2 of 45 million gallons water at temperatures 18 degrees (F) above ambient provides for algae bloom incubation conditions in the spring and algae bloom life extension in the fall. The thermal pollution provided for a longer life cycle which may have a cumulative impact from year to year. This is not examined in the ER.~~

### **Scope and Materiality:**

In support of this Contention, the Petitioner submits into the docket the following analysis from the U.S. NRC, pertaining to the Fermi 2 Nuclear |Reactor: The U.S. Nuclear Regulatory Commission (NRC) has stated in Draft NUREG-2105, volume 1, October 2011, page 2-228: "Public and occupational health can be compromised by activities at the Fermi site that encourage the growth of disease-causing microorganisms (etiological agents). Thermal discharges from Fermi into the circulation water system and Lake Erie have the potential to increase the growth of thermophilic organisms. These microorganisms could give rise to potentially serious human concerns, particularly at high exposure levels." (Emphasis added).

### **Basis:**

The Governor of the State of Ohio recently declared a "State of Emergency" (summer 2014) in response to a clean drinking water supply crisis in and around the City of Toledo, Ohio. There is no doubt about the significance of this public health crisis. To what extent does the thermal loading resulting from Fermi 2 continued operations contribute to and accelerate this this crisis, and what are the prospects for the future. Petitioners contends that one significant contributing factor is in fact the routine, thermal discharges from Fermi Unit 2 which add cumulative stress impacts to the fragile ecosystem of Lake Erie's shallow western basin and shoreline. Lake Erie already suffers from numerous environmental stressors, including pollution from agricultural runoff (such as phosphorus), sewage overflows and routine, authorized releases of industrial toxic chemicals (including releases originating from Fermi, Unit 2).

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In addition, thermal pollution from nearby power plants is a known contributing factor to the conditions which produce toxic algal blooms and consequent hypoxic dead zones. The exact and precise extent to which Fermi, Unit 2 normal operations are directly causative, not just correlative, of significant environmental and public health impacts is "*unknown and unanalyzed*." Therefore, the Petitioner hereby invokes NEPA requirements and contends that a "hard look" and further analysis is called for, as a precondition for approval of the Applicant's Fermi, Unit 2 License Renewal Application (LRA).

The proposed twenty year license renewal, if granted will result in twenty years of accumulative thermal load to Lake Erie; this should not be ignored. The role of Fermi 2 in cumulative impact of thermal pollution from coal plants north and south has not been considered. Mitigation strategies to offset the thermal pollution from Fermi 2 must be considered. The utilization Cooling Towers at the Monroe Power Plant would be one example of mitigation. ~~DTE discussion of Harmful Algal Blooms (HABS) provided in the ER (3-113, 114) relies on data from 2008, 2011 and concludes small impact misses the point that HABS are occurring now in real time and are having a devastating impact downstream.~~ The role of thermal pollution from Fermi 2 must be understood and considered in a thorough analysis. Lake Erie must not be put in jeopardy to allow another twenty years of Fermi 2 operation.

### ***CRAFT Contention 13: Inadequate Radiation Protection Standards***

The Petitioner CRAFT requests an evidentiary public hearing in order to seek a Board recommendation for the U.S. NRC Commission to issue an Order to independently assess the adequacy of current and proposed U.S. EPA guidelines pertaining to environmental radiation protection standards for nuclear power operations, including for NRC-regulated facilities such as Fermi, Unit 2. CRAFT seeks stronger interagency regulations that (a) begin to integrate longer-