



UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

January 30, 1994

Mr. Valdas V. Adamkus
Regional Administrator, Region 5
U.S. Environmental Protection Agency
77 West Jackson Boulevard
Chicago, IL 60604-3590

Dear Mr. Adamkus:

I am pleased to respond to your letter of December 30, 1993, in which you state that having recently become aware of proposals for dry cask storage at the Palisades and Prairie Island nuclear power plants, your office desires copies of the environmental documentation relating to those proposals. While we are of course happy to provide the documents you seek, you should be aware that all of the environmental documentation relating to cask design used at Palisades (the "VSC-24") was sent to the U.S. Environmental Protection Agency (EPA) headquarters some six months ago, with copies to a member of the EPA Region 5 staff. (See the attached letter of August 4, 1993, to Ms. Susan Offerdal, EPA.)

Since that time, there have been a number of developments relating to dry cask storage that may be of interest to you. Most notably, last fall the Government filed its brief in Kelley v. Selin, Nos. 93-1646 et al., in the U.S. Court of Appeals for the Sixth Circuit, involving the casks at Palisades.

The central issue in this case, which is now pending before the court (no date for oral argument has so far been established) was the procedure used by the U.S. Nuclear Regulatory Commission to approve the "VSC-24" spent fuel storage casks. The NRC's position was that its procedure for approving the cask design (by generic rulemaking, without the need for additional site-specific approvals) was consistent with the clear statutory directive of Congress in the National Waste Policy Act of 1982. Congress, seeking to foster the development of "off-the-shelf" at-reactor spent fuel storage technologies that could be used safely at any nuclear power plant site, directed NRC to use generic approvals, without additional site-specific approvals (and attendant adjudicatory hearings), "to the maximum extent practicable." NRC's technical judgment, reflected in a 1990 rulemaking, was that this approach was indeed fully "practicable."

The essence of the petitioners' challenge is that there is something unique about the Palisades site that warrants a site-specific environmental analysis, notwithstanding the statutory directive. The Government's brief argues in response that the NRC's 1990 rulemaking, in which the petitioners did not participate, established the principle that no site-specific analysis is necessary or desirable so long as the NRC can find, generically, that a particular cask design can withstand the range of environmental and climatic conditions representative of NRC-licensed nuclear plant sites for which its use is approved.

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In fact, the environmental analysis underlying the decision on the VSC-24 cask is extensive. The record reflects a series of "tiered" analyses, beginning with a Generic Environmental Impact Statement in 1979 on the handling and storage of spent fuel, and encompassing, over a period of years, a number of related and progressively more specific findings, including environmental assessments of the 1990 and 1993 rulemakings. Moreover, the Palisades site was the subject of a full environmental impact statement at the time of the initial licensing of the plant.

In sum, because the generically approved VSC-24 cask can only be used on sites already approved for nuclear power plants, the result at Palisades is that a safe and exhaustively reviewed technology has been installed on a safe and exhaustively reviewed site.

A copy of the brief is enclosed for your information.

The installation of spent fuel storage casks at Prairie Island, on the other hand, took place through an individual licensing action rather than a rulemaking. As the NRC noted in its August 4, 1992, Federal Register notice on the subject, a copy of which is enclosed, an environmental assessment found that there would be no significant impacts from construction of the casks. Radiological impacts from gaseous and liquid effluents were found to be minimal, falling within the scope of impacts evaluated for licensed reactor operations and controlled by the existing technical specifications for the Prairie Island plant.

The 1992 notice noted that the environmental assessment relied on a number of previous environmental documents, including the 1973 Final Environmental Statement for the Prairie Island plant; the 1991 Final Environmental Impact Statement on the Prairie Island Independent Spent Fuel Storage Installation, prepared by the Minnesota Environmental Quality Board; EPA's Federal Guidance Report #11, EPA 520, 1-88-020; and the 1979 Final Generic Environmental Statement on the handling and storage of spent fuel. The environmental assessment took note of the presence of a nearby Indian Tribe community and of the Bartron Archaeological Site, an area including evidence of an Indian village and burial mounds, which was discovered at the southern boundary of the plant site and was added to the National Register of Historic Places in February 1971.

A further instance of NRC's due recognition of its responsibility to the Indian Tribe in the vicinity of the Prairie Island nuclear plant will also interest you, since you mention the issue in your letter. After the NRC published notice on October 19, 1990, of its consideration of issuance of a materials license for spent fuel storage at Prairie Island, a notice of intervention was filed by the Prairie Island Mdwakanton Sioux Indian Community. In March 1991, a stipulation agreement was signed by the Tribe, the NRC staff, the utility, and two State of Minnesota agencies which had also filed intervention petitions. Under it, the petitioners withdrew their intervention petitions, and the NRC and the utility agreed to furnish complete information, including notice of relevant meetings, and to perform additional analyses requested by the petitioners.

In sum, we believe that the NRC's handling of the issue of spent fuel storage at Palisades and Prairie Island has been above reproach: in its technical and environmental soundness, in its fidelity to Congressional directives, and its responsiveness to concerns of public commenters, State bodies, and affected Indian Tribes. We think that on review of the relevant documents, you will share our view.

Sincerely,

**Original signed by
Robert M. Bernero**

Robert M. Bernero, Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. Ltr to S. Offerdal
frm F. Sturz dtd 8/4/93 w/encl.
2. Brief dated 11/3/93
3. Federal Register Notice 8/4/92

Distribution: EDO #9678 w/o encl. NRC File Center Docket 72-1007 50-255 50-266/301 72-10 PDR LPDR
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