

NUCLEAR REGULATORY COMMISSION
UNITED STATES OF AMERICA

NOTICE OF PROPOSED RULEMAKING :
10 CFR PARTS 50 & 51 : PETITION OF COUNTY OF
STORAGE & DISPOSAL OF NUCLEAR : OCEAN & TOWNSHIP OF LOWER
WASTE - FEDERAL REGISTER : ALLOWAYS CREEK, NEW JERSEY,
OCTOBER 25, 1979 : FOR "FULL PARTICIPATION"

PP-59 51

TO: Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C., 20555

Attention: Docketing & Service Branch



1. Ocean County, a political subdivision of the State of New Jersey and a regional unit of government of the State of New Jersey and the Township of Lower Alloways Creek, a political subdivision of the State of New Jersey and Township located in Salem County, New Jersey, hereby petition the Commission to participate as a "full participant" in the proceedings dealing with proposed rulemaking in respect to the storage and disposal of nuclear waste as outlined in the Federal Register, Thursday, October 25, 1979.

2. Ocean County is an unit of county government of the State of New Jersey. The State of New Jersey is divided into twenty-one (21) counties and Ocean County is in the southeastern part of New Jersey bordering the Atlantic Ocean. Within Ocean County there are various political subdivisions of municipal government. One of

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these units of governments is Lacey Township. Located within Lacey Township is the Oyster Creek Nuclear Power Station which has an operating license. The Forked River Power Station has been given a construction license and was under construction. However, since the Three Mile Island accident construction on the Forked River power station has ceased although the Utility has indicated it has not abandoned its plans to construct Forked River nuclear power station.

Ocean County considers the spent fuel generated as radioactive waste from Oyster Creek as a significant potential problem for regional government and considers it has a vital and necessary interest in questions involving the safe offsite disposal of radioactive waste, the availability of facilities for such waste and the problems of onsite storage of said waste in the event offsite storage facilities are not available.

3. The Township of Lower Alloways Creek is a municipal unit of government located in Salem County, New Jersey. The Township is located in the southwestern portion of New Jersey bordering the Delaware River. Located within the Township are Salem Unit #1 nuclear power station which has an operating permit and Salem Unit #2 nuclear power station which has a construction permit and is completed and awaiting an operating permit. Under construction permits are Hope Creek Unit #1 and #2, nuclear power stations.

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The Township of Lower Alloways Creek is presently an Intervenor in a proceeding before the Atomic Safety & Licensing Board, Docket #50-272. This proceeding is pending and involves an application by the Utility to expand spent fuel storage capacity at Salem Unit #1. In that proceeding based on the contention admitted and certain Board Questions, safety implications and environmental impacts of radioactive waste storage onsite are under consideration. However, it is the understanding of the Township of Lower Alloways Creek that safety implications and environmental impacts of radioactive waste storage onsite for the duration of the license will continue to be subjects of adjudication in individual facility licensing proceedings. Therefore, the participation of the Township of Lower Alloways Creek is in no way inconsistent with the Atomic Safety & Licensing Board proceeding, Docket #50-272.

The Township of Lower Alloways Creek petitions the Commission to be admitted as a "full participant" in the proposed rulemaking proceeding on storage and disposal of nuclear waste.

4. The Township of Lower Alloways Creek and Ocean County have joined together to consolidate their position and wish to be admitted as a "full participant". However, in the event the Commission would admit one and not the other governmental entity, then this notice of intent to participate in consolidated form is in no way to be construed

as limiting the remaining governmental entity to being admitted as a "full participant". Therefore, this notice of intent to participate is to be taken as an application made, jointly, severally, and in the alternative for both or either the Township of Lower Alloways Creek or Ocean County to be admitted as a "full participant".

5. Ocean County and the Township of Lower Alloways Creek have hired legal counsel and other technical experts to assist them in their participation in the proposed rulemaking procedure on the storage and disposal of nuclear waste. Both governmental entities have the financial standing to actively participate in the proposed rulemaking procedure and to direct their experts to prepare technical reports and a statement of position which would make a significant contribution to the waste confidence proceeding.

Ocean - Township of Lower Alloways Creek have prepared a report entitled "An Inquiry Into the Safety of Nuclear Waste Disposal" prepared by Dr. Richard E. Webb. In addition, Ocean - Township of Lower Alloways Creek have significant interest as the governmental entities, both regional and local where two existing nuclear power stations are operating and as many as four additional may be licensed to operate and are fully constructed or at some stage of construction.

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Ocean - Township of Lower Alloways Creek petitions to participate as a "full participant" in order to be part of the governmental process which: 1) reassesses the confidence level as to whether safe onsite disposal of radioactive waste from licensed facilities will be available; 2) when such disposal or offsite storage available, and 3) if disposal or offsite storage will not be available is vitally concerned over the issue of whether the wastes generated by the facilities can be stored safely onsite.

Ocean - Township of Lower Alloways Creek will fully participate in reviewing all documents in the proposed rulemaking procedure and will submit independent documents directed to the technical issues. In Intervention Proceeding Before the Atomic Safety & Licensing Board, Docket #50-272, the Township of Lower Alloways Creek has submitted testimony and/or technical reports of Dr. Chauncey Kepford, Dr. Richard E. Webb, Dr. George E. Luchak, and Dr. Earl E. Gulbransen. Ocean - Township of Lower Alloways Creek contends that their presence in the proposed rulemaking procedure will be a significant assistance to the Commission and that it increases the purposes of local and regional participation in the Commission's decision.

Ocean - Township of Lower Alloways Creek presence and interests would not necessarily be represented by the State of New Jersey or any other governmental entity.

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6. Tentative Positions:

a) Ocean - Township of Lower Alloways Creek contends that there are serious safety questions inherent in the process of enlarging spent fuel pools due to the lack of adequate away-from-reactor storage or offsite disposal facilities.

b) Ocean - Township of Lower Alloways Creek contends that inadequate consideration has been given as to the responsibility of the Utilities to provide away-from-reactor storage and/or offsite disposal facilities as distinguished from governmental entities such as the Department of Energy.

c) Ocean - Township of Lower Alloways Creek contends that away-from-reactor storage facilities or offsite disposal facilities could be available within three - five years based on a concerted commitment and effort on the part of the Utilities and governments.

d) Ocean - Township of Lower Alloways Creek contends that the original siting criteria under which nuclear power generating facilities were licensed did not consider that those facilities would become nuclear waste storage facilities and that other criteria are applicable to storage facilities and that nuclear wastes - especially spent fuel - should not be stored in close proximity of operating reactors. The storage of spent fuel for other than the cooling period should be decoupled from operating

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reactors and take place in away-from-reactor storage facilities and/or disposal facilities.

7. Special Matter of Concern Sought to be Raised:

Ocean - Township of Lower Alloways Creek contends that the Nuclear Regulatory Commission has ignored the requirements of the National Environmental Policy Act, §102 (2) (c) (v), 42 U.S.C. §4332 (2) (c) (v), in respect to permitting the expansion of spent fuel pools to permit long term storage of spent fuel at-reactor sites. This has been accomplished by the Nuclear Regulatory Commission doing environmental analysis pursuant to 10 CFR, Part 51, 40 CFR, 1500.6 and 40 CFR, 42.801. This environmental analysis falls short of the requirements of the National Environmental Policy Act which would require an environmental impact statement and public participation.

The proposed rulemaking procedure is merely indicative of the gap that has occurred in respect to the mandates of the National Environmental Policy Act. The underlying assumption in the proposed rulemaking procedure is that there are no environmental impacts or problems associated with the storage of spent fuel at the reactor site during the licensing period of the reactor. The only question raised is whether the storage of the spent fuel beyond the licensing period of the reactor can be accomplished safely until disposal is available. Decisions to permit expansion of spent fuel pools which creates large amounts of nuclear waste which do require isolation from the environment

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are an irreversible and irretrievable commitment of resources which should receive detailed analysis under the National Environmental Policy Act. Ocean - Township of Lower Alloways Creek contends that the environmental analysis that is done by the Nuclear Regulatory Commission in respect to each spent fuel expansion is the nature of a self-fulfilling determination that there is no requirement to prepare an environmental impact statement. The Nuclear Regulatory Commission should face up to the legal responsibility of preparing a specific generic environmental impact statement which would deal with the at-reactor storage of spent fuel which is taking place throughout the United States and will continue to take place for some time into the future, or alternatively to prepare specific environmental impact statements in regard to each licensed reactor where expanded fuel storage is taking place.

Ocean - Township of Lower Alloways Creek contend that this special matter of concern though not directly set forth in the proposed rulemaking is inextricably related.

8. Ocean - Township of Lower Alloways Creek contends that the discovery procedure set forth in 10 CFR, Part 2, should be employed during the proposed rulemaking procedure. The imposition of the discovery provisions of Part 2 would

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increase Ocean - Township of Lower Alloways Creek willingness to participate in the rulemaking procedure and would beneficially effect the quality of their contribution to the record.

Respectfully submitted,

CARL VALORE, JR. Special
Nuclear Counsel for the
County of Ocean and Township
of Lower Alloways Creek

November 23, 1979

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NUCLEAR REGULATORY COMMISSION
UNITED STATES OF AMERICA

NOTICE OF PROPOSED RULEMAKING : Petition of Ocean -
10 CFR, Parts 50 & 51 : Township of Lower
Storage & Disposal of Nuclear : Alloways Creek for
Waste, Federal Register, October : "Full Participation"
25, 1979 :
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I the undersigned hereby certifies that I mailed to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C., 20555, Attention: Docketing & Service Branch, the County of Ocean and Township of Lower Alloways Creek Petition in the above captioned matter by first class mail, with proper postage thereon by depositing the same in the U.S. Post Office, Northfield, N.J., this 23rd day of November, 1979.



CARL VALORE, JR. Special Nuclear
Counsel - County of Ocean and
Township of Lower Alloways Creek

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