

November 24, 1978

UNITED STATES
NUCLEAR REGULATORY COMMISSION

IND
SECY-78-613
15/11/78

CONSENT CALENDAR ITEM

For: The Commissioners

From: Clifford V. Smith, Jr., Director
Office of Nuclear Material Safety and Safeguards

Through: f Executive Director for Operations *W. J. [Signature]*

Subject: RESPONSE TO NATURAL RESOURCES DEFENSE COUNCIL, INC.
PETITION FOR RULEMAKING (PRM-20-7)

Purpose: To analyze the issues of the petition in light of comments received from the public, recommend a response to the petition, and obtain Commission approval of a proposed Federal Register Notice informing the public of the Commission's response to the petition.

Category: Routine matter requiring Commission consideration.

Issues: Whether a potential health and safety problem exists to justify immediately establishing interim regulations; and whether a generic environmental impact statement on the NRC low-level waste management program is warranted under NEPA as requested by the petitioner.

Value-Impact Statement: A value-impact statement is not necessary because the proposed Commission response to the petition reflects a continuation of previously announced Commission policy and does not involve a regulatory action.

Discussion: Petition

By letter dated August 6, 1976, the Natural Resources Defense Council, Inc. (NRDC) filed with the Nuclear Regulatory Commission (NRC) a petition for rulemaking requesting that the NRC-immediately adopt interim regulations setting standards for shallow land disposal of transuranic (TRU) and other low-level radioactive waste. (Copies of the letter and petition are included as Enclosure 1.) The petitioner also requested that the Commission immediately prepare a generic environmental impact statement (GEIS) pursuant to the National Environmental Policy Act of 1969 (NEPA) on the Commission's program for disposal of low-level radioactive waste.

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Public Comments on Petition

A Federal Register Notice (41 FR 41759) was issued on September 23, 1976 outlining the petition for rule-making and requesting written comments or suggestions from the public. Fifteen responses were received from industry or state groups and one response was received from the petitioner, who filed an "analysis of comments" and comments on the other responses.

Only one commentator besides the petitioner consistently supported the petition, as stated. Overall response was that although issues were raised which should be addressed by NRC, there was not sufficient safety, environmental, or legal justification to warrant NRC issuance of immediate interim regulations or NRC preparation of a programmatic GEIS. (A detailed outline of the comments received from the public is included as Enclosure 2. A concise summary of the comments is included in Enclosure 3, pp. 5-7.)

Low-Level Waste Regulations Development Program

As described in SECY-77-489, the NRC has an ongoing program for technical study and development of regulations governing the disposal of low-level radioactive waste. Although the petition provided input to the formulation of the program, the staff believes that the program encompasses a much larger scope than the standards development effort called for in the petition.

A summary of the low-level waste regulations development effort is included in Enclosure 3, pp. 8-14. By late 1979 or early 1980, the staff expects to publish the following:

- A proposed waste disposal classification regulation which will numerically define the quantities of various kinds of radioactive material -including TRU radionuclides--that can be disposed of by different generic disposal methods.
- A proposed regulation, 10 CFR Part 61, which will define the institutional as well as the technical requirements for management of low-level waste; including requirements for licensing disposal by shallow land burial, alternative disposal methods (1981), and unlicensed confinement by disposal to ordinary refuse channels.

Contractual efforts have been initiated (request for proposals published) to prepare EIS's to guide and support the two proposed regulations. Advance notices of proposed rulemaking are being published (SECY-78- 9, SECY-78-[number to be added]) to obtain public input into the scoping process for the EIS's.

Staff Position on Petition

The NRDC petition essentially requests five kinds of immediate actions from the NRC:

1. Reassert regulatory authority for TRU waste from Agreement States and limit TRU waste disposal site a retrievable form;
2. Invoke a moratorium on new or enlarged burial site licensing pending the establishment of disposal site criteria and standards;
3. Establish a perpetual care fund by regulation;
4. Restrict transportation of low-level waste in liquid form; and
5. Prepare a generic environmental impact statement.

Brief summaries of the staff's positions on these actions appear below; more detailed discussions may be obtained from Enclosure 3 by referencing the pages parenthetically included at the beginning of each summary.

Although NRDC requested immediate action two years ago, staff agreed with the consensus of the public commentators and did not feel that immediate rule changes were warranted or necessary. Staff recognized that license changes could readily be taken for the small number of disposal sites should immediate action be required and that rule changes would have required waste management resources not available two years ago. We have, however, kept NRDC informed on the development of our program and have asked for their input.

TRU Waste Disposal (pp. 15-19). Under Section 274 c (4) of the Atomic Energy Act of 1954, NRC must determine existence of a hazard or potential hazard prior to the

reassertion of regulatory authority from Agreement States. A somewhat similar finding must be made for the immediate implementation of regulations governing low-level waste disposal or prohibiting burial of small quantities of TRU waste. The staff does not believe that sufficient cause exists to justify the necessary finding that an immediate hazard exists or potentially exists for exercise of this statutory authority. A program to develop broad comprehensive regulations governing the management and disposal of low-level waste is already underway. Assignment of staff to work on temporary immediate regulations would delay promulgation of the more comprehensive regulations under development.

Today, the quantities of commercial TRU waste being disposed of by burial are small and the only disposal site accepting TRU waste for burial is the commercial facility located in the center of the Hanford Reservation. Possible environmental effects of burial of small quantities of plutonium at this facility during the time before promulgation of the regulations now under development are under investigation by the licensing staff in connection with review of a disposal license renewal application. Discussions have been initiated with the commercial site operator, DOE, and the State of Washington to identify the potential administrative, technical, and legal problems accompanying discontinuance of TRU burial at this site. The staff notes that, due to the present NRC regulations development program, there may be a near-future need for retrievable storage of certain types of radioactive waste as defined by the waste classification regulation. Under proposed policy, such storage would be conducted by the Federal government (e.g., DOE).

Licensing of New or Enlarged Burial Sites (p. 19).

The staff believes that licensing new or enlarged burial grounds--fully justified on the basis of need demonstrated through the NEPA process--is an option which for the protection of the public health and safety should not be foreclosed. Until the regulations governing shallow land burial and alternative disposal methods are established, applications for new or enlarged disposal sites will be treated by the staff on a case-by-case basis.

Long-term Care and Funding (pp. 19-22). Issues related to long-term care and funding of commercial waste disposal sites are being addressed. The staff believes that such issues, some of which were noted by the petitioner, can be best resolved within the framework of the existing NRC low-level waste management program. In accordance with the program, NRC staff has initiated studies to investigate both the institutional and technical aspects of long-term care and funding to help establish requirements of the proposed Part 61 regulation.

Transportation of Liquid Low-Level Waste (pp. 22-24). A final environmental statement covering the transportation of all types of radioactive material--from spent fuel to low specific activity material--was recently published ("Environmental Impact Statement on the Transportation of Radioactive Material by Air and Other Modes", NUREG-0170, December 1977). Based on this statement and the staff's continuing review of potential problems associated with transport of radioactive material, the staff concludes that no health and safety problem currently exists to warrant the immediate implementation of regulations prohibiting transportation of liquid waste. There is no demonstrated rationale to adopt a more restrictive attitude regarding transport of liquid low-level waste than required for other radioactive material.

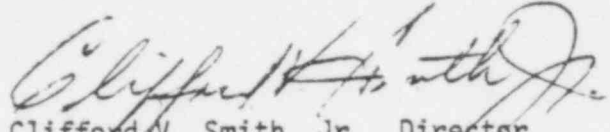
Low-Level Waste GEIS (p. 25). The NRC staff believes that issuance of a separate programmatic GEIS is neither required by NEPA nor necessary to conduct its existing program for study and regulation development for low-level waste disposal. The environmental impact statements published and technical studies conducted to support NRC's low-level waste regulations will be sufficiently broad in scope to obviate any need for a separate GEIS.

Recommendations: The staff recommends that the Commission approve:

1. Publication of the Federal Register Notice (Enclosure 3) denying the petition.
2. Transmittal of the letter (Enclosure 4) to the petitioner notifying him of the denial.
3. Transmittal of the letters (Enclosure 5) to Congressional Committees notifying them of the denial.
4. Issue a public announcement (Enclosure 6) on denial of the petition.

Coordination: The Offices of Standards development and State Programs concur in the content of this paper. The Office of the Executive Legal Director has no legal objection. The Office of Public Affairs prepared the public announcement.

Scheduling: For affirmation at an open Commission meeting.


Clifford V. Smith, Jr., Director
Office of Nuclear Material Safety
and Safeguards

Enclosures:

1. NRDC Petition for Rulemaking, PRM-20-7
2. Outline of Comments Received on NRDC Petition
3. Proposed Federal Register Notice of Denial of Petition for Rulemaking
4. Letter to Petitioner
5. Letters to Congressional Committees
6. Public announcement on denial of the petition

NOTE: Commissioners' comments or consent should be provided directly to the Office of the Secretary by c.o.b. Friday, December 8, 1978.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT December 4, 1978, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

This paper is tentatively scheduled for affirmation at an open meeting during the week of December 11, 1978. Please refer to the appropriate Weekly Commission Schedule, when published, for a specific date and time.

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