

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

IN THE MATTER OF)
)
NUCLEAR ENGINEERING CO.) On Appeal to the Atomic Safety
(Sheffield Illinois Low Level) and Licensing Appeal Board
Radioactive Waste Site) Docket No. 27-39

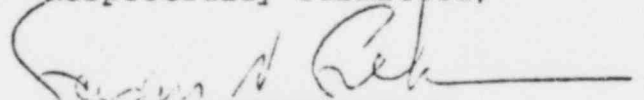
TO THE MEMBERS OF THE BOARD:

Enclosed you will find a corrected page 8 to be substituted for the original p. 8 mailed with the State of Illinois Brief filed July 21, 1980 in response to the American Nuclear Society Brief on Appeal. We apologize for any inconvenience the errors in this document may have caused you.

In addition to the page substitution please make the following additional corrections.

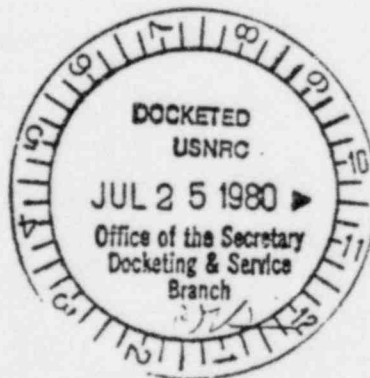
1. Title Page-Heading: Insert the word "Appeal" between Licensing and Board
2. Page 4, line 23: substitute "one" for "once"
3. Page 9, line 26: substitute "effect" for "affect"

Respectfully submitted,



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The legislative history of the Act is also instructive. According to the Senate Report, "major actions" covered by §4332(2)(c) of NEPA include "project proposals, proposals for new legislation, regulations, policy statements or expansion or revision of ongoing programs..."* The Board's order in the instant proceeding clearly is not of the magnitude envisioned by the framers of the Act or those who have interpreted the legislation. See Virginians for Dulles v. Volpe, 541 F.2d 442, 446 (C.A. 4th, 1976). See also Arlington Coalition on Transportation v. Volpe, 458 F.2d 1323, 1331 (4th Cir. 1972) and Greene County Planning Board v. Federal Power Commission, 455 F. 2d 412, 424 (2d Cir., 1972). The Board's order did not set in motion events which would correspond to the definition of the elements of a major federal action, nor did it work any vast changes affecting the area. The Board's action was merely a formality based on necessity to conform to regulations.** Thus the Board's order does not constitute a mandate for an EIS because it does not fall within the first NEPA requirement of "major federal action".

Even were the Board's order to be considered a major action under NEPA an EIS still would not be required because the order does

* S. Rep. No. 296, 91st Cong., 1st Sess. 1969 at 20.

** 10 CFR §2.107(a) appears to require an act of the Commission to allow withdrawal of an application after a notice of hearing has been issued.

