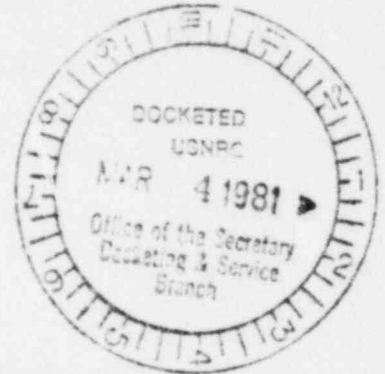


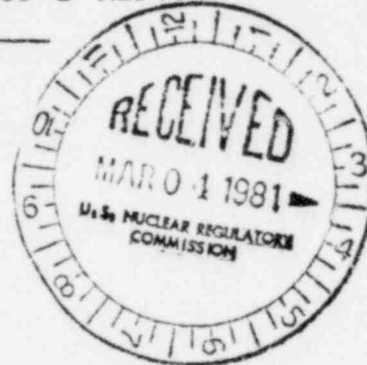
UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE COMMISSION

In the Matter of)
)
PROPOSED RULEMAKING ON THE) PR-50,51
STORAGE AND DISPOSAL) (44 FR 61371)
OF NUCLEAR WASTE)
) March 4, 1981
(Waste Confidence Rulemaking))



COMMENTS OF THE AMERICAN NUCLEAR
SOCIETY ON THE WORKING GROUP'S REPORT



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I

THE RECORD DOES NOT NEED SUPPLEMENTATION
IN ORDER FOR THE NUCLEAR REGULATORY
COMMISSION TO MAKE A FINDING OF CONFIDENCE

The American Nuclear Society (ANS) endorses those portions of the Working Group's report which state that the record is adequate for the Nuclear Regulatory Commission (NRC) to make its finding of confidence that nuclear waste^{*} can be stored and disposed of safely. ANS fully concurs with the Working Group's determination that the record does not need supplementation in the following areas: the federal role and federal-state relations; technical issues for spent fuel storage; and the description of current knowledge for repository site selection, engineering activities for repository site development and operation, and repository performance.

ANS believes that supplemental information is not necessary in order to make a finding of confidence in those few areas where the Working Group stated that such information may be desirable. Specifically, ANS fails to ascertain the relevance of a discussion of the Department of Energy's (DOE) past waste management program expenditures and plans, especially in light of

^{*}/ The American Nuclear Society (ANS) again reiterates that it does not consider spent fuel to be waste. Spent fuel represents a significant national energy asset.

For this reason, ANS, in advocating a finding that it is now technically feasible to dispose of spent fuel, does not reject the potential of reprocessing of spent fuel. In fact, ANS submits that a finding of confidence in the current proceeding is sufficient to provide the Commissioners with equal or greater confidence that processed, separated high-level waste can be disposed of safely and permanently.

DOE's reorganizaton within that area last fall; ANS believes that a finding of confidence is possible without information derived from recent power plant siting investigations at the Hanford site; and that the time to consider additional studies on DOE's analysis of retrievability is when a full scale license application is being processed. In essence, none of these areas are central to a finding of confidence.

II

THE NUMEROUS ALLEGED INSTITUTIONAL ISSUES
ARE LEGISLATIVE MATTERS BEYOND THE
AUTHORITY OF THE NUCLEAR REGULATORY
COMMISSION, AND CONSIDERATION OF THEM IS
NOT NECESSARY FOR A FINDING OF CONFIDENCE

The Working Group has identified numerous issues for consideration in this proceeding. However, one of those issues--namely, institutional issues--should not be included in the NRC's decisionmaking process. Resolution of the institutional issues is not within the scope of NRC's authority, nor is it pertinent to the question of safety. This proceeding must focus only on the substantive issues identified in the record--i.e., the technical aspects of spent fuel storage and waste disposal.

NRC's finding of confidence should not be contingent upon the resolution of institutional matters because such matters must be resolved by the legislative branch of government. Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 558 (1978), Natural Resources Defense Council v. United States Nuclear Regulatory Commission, 582 F.2d 166, 175 (2d Cir. 1978). Indeed, the Advisory Committee on Reactor Safeguards (ACRS) also supports this view. In a

letter from ACRS to the Chairman of NRC, dated December 10, 1980, ACRS expressed its belief that safe disposal of radioactive wastes is reasonably assured from the technical standpoint: "Considering first the technical aspects, we believe safe disposal of radioactive wastes is reasonably assured by the present state of knowledge." ACRS also expressed a high degree of confidence in the long-term storage of spent fuel: "[W]e believe that safe interim storage well beyond 30 years can be provided should it be required. ... We, therefore, conclude that a high degree of confidence is justified that spent fuel can be safely stored until a facility for its safe disposal is available."

ACRS noted that expeditious resolution is needed of legal and political issues concerning site selection and acquisition. They stated that "trying to forecast a firm availability date for a repository is futile in the absence of action by Congress." However, this unresolved factor should not preclude NRC from making a finding of confidence. Others who can and should resolve the institutional issues are waiting for NRC--the agency in charge of nuclear waste disposal--to make a finding of confidence. Once that finding is made, they can go forward with a speedy resolution of the institutional issues, knowing that they will not be acting in vain. These actions will in turn allay public fear surrounding nuclear waste disposal.

In addition, the Working Group itself sees no simple resolution of these institutional issues by NRC. It stated that:

"[It] has reviewed the discussion of these institutional issues in the record of the proceeding and sees no systematic approach to their resolution. The Commission will have to rely on its collective judgment to make findings on the various institutional issues, singly or as a group, to the extent the Commission concludes that this proceeding requires such resolution." (Emphasis added.) Working Group Report at 19.

Thus, it is clear that not only does NRC not have the authority to resolve the institutional issues, but it is not necessary to resolve them. Therefore, ANS urges NRC to make a finding of confidence based solely on the technical information in the record.

III

THE NUCLEAR REGULATORY COMMISSION MUST CONDUCT ITS OWN IN-DEPTH ANALYSIS OF THE RECORD

Although the Working Group has summarized the information presented by DOE and the other participants to this proceeding, their report is still just a summary. In accordance with the Presiding Officer's Order of January 16, 1981, the Working Group did not make any judgments as to the quality of the evidence submitted by the participants. Thus, the opinions of those who do not have the necessary qualifications to address the technical issues in this proceeding are given equal weight to the opinions of those who are highly qualified in this area. The only way for NRC to determine the quality of the evidence submitted--and thus to give each submission its proper weight in NRC's decisionmaking process--is for NRC to engage in an in-depth analysis of the record itself. ANS believes that such an

analysis will lead NRC to a finding of confidence in the feasibility of storage and disposal of nuclear wastes.

CONCLUSION

ANS, based on its independent review of the statements and references filed in this proceeding, respectfully submits that overwhelming evidence has been placed before NRC that nuclear waste can be stored and disposed of safely. Accordingly, ANS feels that a review of supplemental information by NRC in those few areas suggested by the Working Group is unnecessary prior to NRC making a finding of confidence.

In addition, ANS urges NRC to confine its review of the record to the technical issues in order to make a finding of confidence, for NRC lacks the authority to resolve the institutional issues.

DATED: March 4, 1981.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served one copy of the foregoing document, entitled "Comments of the American Nuclear Society on the Working Group's Report," by mail, to the attached list of participants this 4th day of March, 1981.

By Eileen B. White
EILEEN B. WHITE

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter)
)
STORAGE AND DISPOSAL OF) Parts 50, 51
NUCLEAR WASTE) (44 FR 61372)
)
(Waste Confidence Rulemaking))

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