

Director of Nuclear Material
Safety and Safeguards
U.S. Nuclear Regulatory Commission

Docket No. 50-201
NRC Lic. No. CSF-1

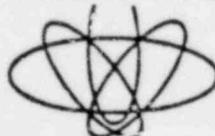
Show Cause Petition

On Why License Change #32 Should Not Be
Rescinded Pending a Public Hearing

The Sierra Club hereby petitions the Director of Nuclear Material Safety Safeguards to issue a show cause order, pursuant to 10 CFR 2.202, on why license change #32 to NRC license no. CSF-1 should not be rescinded pending a public hearing in the matter. The basis for this request is stated below.

SIERRA CLUB INTEREST

The Sierra Club is an environmental organization consisting of 300,000 members nationwide, 18,000 in New York State and 800 in Western New York. Our interest in the matters of Nuclear Fuel Services and the West Valley site has been long-standing, from Dec., 1970 to the present. In April, 1974, the Club became a full party to the NRC construction permit and licensing proceedings regarding an expansion of the NFS reprocessing operation and was an active, responsible participant. As you are aware, the licensee announced, in Sept., 1976, that it was withdrawing from the reprocessing business. It requested prior to that, in April, 1976, that NYSERDA take over responsibility for the nuclear waste materials on the West Valley site. To our knowledge, the hearing regarding Nuclear Fuel Services construction permit has never been formally terminated, at least the parties to Docket No. 50-201 were never informed that notices and license amendments would no longer be received. Before the U.S. Congress, the Club supported the West Valley Demonstration Project and efforts to solidify the high level liquid wastes in an environmentally safe manner. We have



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expressed frequent concern about the status of the high level waste tanks and the need to remove the liquid wastes.

The Club is seriously concerned about the institutional and financial arrangements for care and maintenance of the spent fuel in the spent fuel pool and the two burial grounds, the attendant risk to the public health and safety absent proper institutional and financial arrangements, and the cavalier actions of the NRC Staff. Several of our members live within five miles of the West Valley site and almost all depend on Lake Erie, downstream of the outflow of Cattaraugus Creek, for our water supply. Our Western New York members would therefore be affected by radiation released from the plant facilities. particularly the NRC-licensed burial ground. Our members nationwide would be affected by the precedents being established by the staff in granting a license termination and transferral so precipitously. Because of these affected interests concerns and the damaging precedents being set by the NRC Staff action, on March 6 the Radioactive Waste Committee (the Board of the Radioactive Waste Campaign) and on March 13 the Atlantic (New York State) Chapter of the Sierra Club approved this show cause petition and other, including any necessary subsequent, actions.

BACKGROUND

On August 19, 1981, the Commission received an application by NYSERDA, joined by DOE, to authorize transfer of the facility to DOE, in order that DOE could undertake high level waste solidification operations under the West Valley Demonstration Project Act. The availability and receipt of this application was properly noticed in the Federal Register Sept. 2, 1981 and the license amendment, change #31, was granted Sept. 30, 1981. On October 6, 1981, the Commission received an application from NFS requesting license change #32 which would terminate NFS' responsibility under CSF-1 and transfer these responsibilities to NYSERDA. The receipt and availability of this application was also properly noticed in the Federal Register Nov. 13, 1981. However, in a let-

ter to the Commission dated Dec. 17, 1981, this application was opposed by NYSERDA.

As a preliminary procedural matter, NFS' two-page letter of October 6 falls far short of the requirements of the Commission's regulations for an application to terminate an operating license (see 10 CFR Part 50). For example, NFS' October 6 letter contains virtually none of the general information required by section 50.33, does not contain the decontamination plan required by section 50.82 or any environmental report on decontamination of the facility, and does not include the technical information required by section 50.34.

NYSERDA requested a hearing in the matter. The Commission denied the application on January 11, 1981.

On Feb. 1, 1982, NFS submitted a new proposed license amendment. Differing from the previous two license applications, no notice of the receipt and availability of the Feb. 1, 1982 application appeared in the Federal Register. Supporting letters by NYSERDA and DOE were received Feb. 9 and 10, respectively, and license amendment #32 which terminates NFS' responsibilities and transfers these responsibilities to NYSERDA, was issued Feb. 11, 1982, a mere nine working days after receipt. Notice of the fait accompli appeared in the Federal Register Feb. 18, 1982.

Though the Club has engaged in discussions with NYSERDA representatives, we first became aware of these licensing actions upon reading citations in the NYSERDA/NFS agreement. We immediately called NRC Staff A.T. Clarke, Jr., to learn of these license amendments. After receiving and studying these changes, this action was brought. Had these changes been properly brought to our attention earlier, we would have entered these proceedings at an earlier date.

The Club requests that this license amendment #32 which terminates NFS' responsibility be withdrawn pending a full public hearing on the matter. The time constraints under which the Staff acted, produced a deficient five page Staff evaluation which, the Club believes, did not fully explore the policy, procedural and health and safety implications of the action. We request an opportunity to present these matters before the Commission.

TIMING OF NFS TERMINATION

1. According to the five page Staff evaluation, the health and safety risks of the site will be reduced by DOE's presence. After DOE departs the premises, in perhaps 20 years, NYSERDA will assume responsibility for the site. The Staff is unsure if, at that time, "a licensed operator possessing the requisite financial and technical qualifications will be necessary", since the radiological risk will be reduced. This matter cannot be determined now, according to Staff. In view of these uncertainties about the future state of the site, it is reasonable to inquire whether the license should be transferred at this time or when DOE departs the site. At that time, a full review of the status of the site can be made and the institutional and financial arrangements and qualifications of the license transferee determined. There is nothing in the West Valley Demonstration Project Act that requires that NFS' responsibilities be terminated at this time.

TECHNICAL AND FINANCIAL QUALIFICATIONS OF NYSERDA

2. The Staff further states that "the Commission considers NYSERDA, as an agency of the State of New York, to possess sufficient institutional stability and financial resources, to enable it to acquire the technical qualifications to prevent accidents or to mitigate their consequences, if a licensed operator is needed when NYSERDA, or its successor reacquires the facility." These assertions by the Staff are in the realm of pure conjecture. Whether NYSERDA has the financial and technical qualifications requires a hearing before the license is transferred, when NFS is still present. As the Staff knows and as NYSERDA made plainly aware in their Dec. 17 letter, the State never had operational responsibility for the site; it only was the landlord while NFS operated the facilities. The technical qualifications of NYSERDA have never been ascertained. Further, it is quest-

ionable whether the State has the financial resources as well. The Staff would do well to remind itself that NYSERDA claimed before Congress that it did not have the financial resources to solidify the high level liquid wastes at West Valley and requested assistance from the Federal government. If major alterations, such as exhumation of the burial ground, are required hence, will New York State again request assistance from the Federal government, and will such assistance be forthcoming? These are important questions that must be resolved before a license is terminated or transferred. They affect whether the site will be properly cared for and whether the site will be inimical to the health and safety of the public.

UNEVALUATED SAFETY QUESTIONS
POSSIBLE LICENSE VIOLATIONS

3. The Staff further states that "when NYSERDA, or its successor, reacquires the facility there will be no possibility of creating a type of accident different from those presently evaluated because the project facilities will have been decontaminated and decommissioned and no new activities authorized." These remarks are also conjectural and may be contradicted by information presently being developed. The Sierra Club believes that solid wastes were buried in permeable strata in the NRC-licensed burial ground. No previous analysis with which we are aware evaluates movement of radioactivity along permeable strata. The previous studies assume that wastes are buried in impermeable silty till, as required by the license. Information from core drilling and monitoring wells will be developed this summer by the NYS Geological Survey, under funding from the NRC. These drillings may help clarify the geology of the NRC-licensed burial ground if the work is scientifically-based and done with integrity. However, if an insufficient number of drillings are conducted, if core samples are not taken at frequent enough intervals or if there is controversy regarding the interpretation of the core sampling,

an independent geologic survey of the NRC-licensed burial ground by an outside firm without the biases of the New York Geologic Survey may be necessary. If drillings show that NFS violated its license, the NRC will have no recourse. How could the NRC take regulatory against a non-licensee? Other parties have also expressed concern about the state of the NRC-licensed burial ground. In the Fall, 1980, before the Argonne Senior Technical Consultants Board, the State Department of Health attributed high tritium levels in the ravine between the State and NRC-licensed burial grounds to leakage from the NRC-licensed burial grounds and called for its exhumation. Given the high curie content of this burial ground, the illegal burial of Hanford spent fuel assemblies into the ground, local governments such as the Buffalo Common Council and the Erie County Legislature in resolutions have called for exhumations of both burial grounds. If a health and safety study, with this geological information factored in, shows that it is necessary to exhume the NRC-licensed burial ground, will NYSEDA have the financial and technical qualifications to perform the work? Since this cannot be known at this time, the license transfer should wait until the integrity of the burial ground has been definitively demonstrated and a full accounting of the possible exhumation costs provided.

LICENSE TRANSFER, 10 CFR PART 80

4. This is not a simple license amendment under Section 50.91, but a termination of NFS license responsibilities, under 10 CFR 50.82, and transfer of its responsibilities to NYSEDA, under 10 CFR 50.80. NYSEDA has never had operational responsibility for the West Valley site. A license transfer under 50.80 (b) requires technical and financial data on the transferee and 50.80(c) requires an "appropriate notice to interested persons..." When NYSEDA assumes responsibility for the site 20 years hence, will a hearing take place on whether NYSEDA has the requisite financial and technical qualifications? It would then be too late to consider these questions.

LICENSE TERMINATION, 10 CFR PART 82

5. Part 50.82 applies to license termination. As the NYSERDA Dec. 17 letter makes clear, NFS has not filed a decontamination plan and environmental report, as required by 50.82. To terminate a license the Commission must determine that a site has been properly decontaminated and

the applicant must provide reasonable assurance that the action is not inimical to the health and safety of the public. But the application on file has none of this and the staff has not made a proper safety evaluation of the applicant's request. This includes an evaluation of the NRC-licensed burial ground, fuel pool and reprocessing building.

DANGEROUS LICENSING PRECEDENTS

6. The action by the NRC Staff sets extremely bad precedents for future license terminations. It essentially allows DOE the ability to "launder" an NRC operating license, relieving licensees of decommissioning responsibilities. Had DOE not taken possession of the West Valley site, then NFS' termination would have brought on a full public hearing on NYSERDA's qualifications and on whether NFS had left the site in properly decommissioned condition. However, with DOE taking possession of the site, the final decommissioning time is postponed 20 years hence and NFS will escape this responsibility, if change #32 is allowed to take effect. This same scenario could occur for a nuclear reactor. DOE could assume decommissioning responsibility while the licensee terminated its responsibility. In this fashion, no licensee need ever be concerned about decommissioning. This sets a very bad precedent for other nuclear facilities.

PUBLIC INTEREST NOT SERVED

7. The Commission has purposefully denied the public the opportunity to review these matters. The receipt and availability of several prior license amendments

were properly noticed in the Federal Register allowing interested parties such as NYSERDA the opportunity to respond. In this licensing termination amendment, this was not done. What could be the reason for this haste - nine working days - to approve an application and the denial of the interested public's right to be heard?

IMPROPER NOTICE

8. The Sierra Club is a full party in a proceeding on a construction permit and operating license application by NFS in Docket No. 50-201. An ASLB was appointed, contentions accepted and a distribution list set up for all full parties. To our knowledge, this hearing has never been officially terminated, though the Staff has brought it to our attention that a footnote to the Commission's GESMO order did terminate the NFS proceeding. No official notice was sent to all parties in Docket No. 50-201, however. It is expected that if an applicant is withdrawing an application, or further in this case, terminating responsibility under an existing license, a notice would be issued to all parties on the distribution list. Further, the Club does not consider this action a simple license amendment under 10 CFR 50.91, but more properly, an action under 50.80 (license transfer) and 50.82 (termination) which requires notice under the regulations.

DIRECTOR, NMSS, SHOULD RESCIND LICENSE CHANGE #32 CALL FOR PUBLIC HEARING

9. For good health and safety, procedural and policy reasons, the Club believes the Staff has seriously erred in not providing notice of the receipt and availability of the application in the Federal Register and in not providing the opportunity for a hearing. The action by the Staff was precipitous and in error. The Club therefore requests the Director of Nuclear Material Safety and Safeguards to rescind license change #32 to NRC license no. CSF-1 and to hold a public hearing in this matter.