

May 20, 1982

C O R R E C T I O N N O T I C E

TO ALL HOLDERS OF

SECY-82-197 - DISCUSSION OF NRDC V. NRC, D.C. CIR.
NO. 74-1586 AND CONSOLIDATED CASES (DECISION
HOLDING INVALID NRC'S ORIGINAL, INTERIM, AND
FINAL TABLE S-3 FUEL CYCLE RULES)

Pages 19 and 20 of the subject paper should be replaced with
the attached pages.

THE SECRETARIAT

Attachment:
Pages 19, 20

B401250223 831018
PDR FOIA
WEISS83-363 PDR

and the issue was not addressed in the briefs or argument.

On the issue of economic feasibility, Judge Edwards noted his concern that "the cost of maintenance, surveillance and guarding the public from toxic waste . . . will continue from somewhere between 10,000 and 250,000 years." Conc. Op. at 46. He concluded that such an "open ended subsidy of great dimension" should not be "routinely endorsed" by a court. Therefore he would have remanded on the issue of economic feasibility for further consideration by the Commission and public discussion at licensing hearings. Conc. Op. at 47.

Neither Judge Bazelon nor Judge Wilkey gives more than a passing reference to Judge Edwards' concurrence.

3. Judge Wilkey's Dissent

The thrust of Judge Wilkey's dissent is that Judge Bazelon's opinion, though couched in terms of a straightforward judicial review of the Commission's basis for factual findings (e.g., zero release) and compliance with NEPA procedural requirements (e.g., to take account of environmental risks in agency decisionmaking), actually amounts to an impermissible substitution of the court's judgment for the agency's in what is essentially a policy decision, the NRC's determination of the effect

which waste disposal uncertainties will have on licensing decisions. ^{7/} Judge Wilkey would accord "the greatest deference" to the manner in which an agency structures its proceedings to comply with NEPA and stresses that "[e]ven though NEPA provides that environmental considerations must be made 'to the greatest extent possible,' [a court] may not, under the guise of close scrutiny for procedural compliance, dictate to the agencies just how this consideration is best made." Diss. Op. at 47. He sees the majority's decisions as "no more than a giant step sideways," Diss. Op. at 64, from the court's earlier efforts to impose procedural burdens on the NRC over and above those required by statute, the approach conclusively rejected by the Supreme Court in Vermont Yankee.

Judge Wilkey viewed the S-3 rule as "only one part of an ongoing and wide-ranging Commission effort to evaluate long-term nuclear waste disposal issues." Diss. Op. at 24 (emphasis in the original). He stresses that the rule must be reviewed on the basis of its "limited purpose," rather than regarded as "an exhaustively comprehensive table of precisely accurate figures as to which all uncertainty had been eliminated." Diss. Op. at 27. He notes that the Commission

^{7/} Judge Wilkey states in his introductory analysis: "[I]t is not our job to substitute our judgment for the agency's to reach what we perceive to be the best or correct result. Yet this is precisely what the majority has accomplished in this case." Diss. Op. at 5.