

AA61-2

PDR

70
Sub to E80
3/24

The Honorable Alan K. Simpson, Chairman
Subcommittee on Nuclear Regulation
United States Senate
Washington, D.C. 20510

IDENTICAL LETTER SENT TO:
Senator George J. Mitchell
Senator Gary Hart

Dear Senator Simpson:

Thank you for your letter of March 15, 1983, expressing your concern about how the Commission would treat license amendment requests regarding the reracking of spent fuel storage pools in its interim final rule implementing the "Sholly" provision in the Fiscal Year 1982-83 NRC Authorization Act. You are correct in your understanding that, under the staff proposal pending before the Commission (SECY-83-16B), the Commission would examine case-by-case license amendment requests to rerack spent fuel storage pools and that it would make a determination about whether any given amendment poses or does not pose significant hazards considerations based upon the "intrinsic circumstances" of the case.

In the past, the Commission has not taken a position on whether any particular reracking involves significant hazards considerations. Nonetheless, it has been providing prior notice and an opportunity for a prior hearing on amendment requests involving reracking. As explained in SECY-83-16B, the Commission will continue to offer such prior notice of these amendment requests and, additionally, solicit public comment on its proposed determinations. Moreover, if it cannot determine that a particular reracking involves no significant hazards considerations, it will provide an opportunity for a prior hearing. As a matter of technical judgment, however, it is not prepared to say that all rerackings, without exception, are or are not likely to involve significant hazards considerations. A majority of the Commissioners believe that each amendment request for a reracking will have to be judged "with respect to its own intrinsic circumstances, using the standards in § 50.92 of the interim final rule." Consequently, though the decision was a difficult one, the Commission has decided not to include reracking of spent fuel storage pools in the list of examples in the preamble of the rule.

With respect to your point that reracking should be put into the rule itself as one of the standards, the Commission agrees with the Senate Committee on Environment and Public Works in its comment upon the Commission's proposed rule "that reasonable persons may differ on whether a license amendment involves a significant hazards consideration." Additionally, the Commission has tried to develop and promulgate standards that, "to the maximum extent practicable, draw a clear distinction" between license amendments that do

8604170245 860327
PDR PR
2 45FR20491 PDR

and those that do not involve significant hazards considerations; the Commission believes that the standards in the rule coupled with the examples in the preamble of the rule help draw as clear a distinction as practicable. To provide the needed flexibility for the Commission's case-by-case decisions on reracking, the Commission has decided, given its technical consensus, that it would not be appropriate to foreclose the question of significant hazards considerations by including reracking (or for that matter any other specific categories of actions) within the rule itself, but, rather, to provide several examples as generalized guidance for application of the rule. (These guidelines will be distributed to all licensees and will be available in the Commission's main Public Document Room as well as in all such rooms throughout the country.) The Commission believes that this action is consistent with overall Congressional intent with respect to the "Sholly" provision, as evidenced in the Conference Report and various floor debates expressing approval of the Commission's then-proposed standards, which have been retained in the interim final rule.

I thank you for allowing me the opportunity to explain the Commission's position on this difficult matter and hope we can continue to work together to implement this important piece of legislation.

Sincerely,

Nunzio J. Palladino
Chairman

DISTRIBUTION

Dircks	Roe
Rehm	Denton
Minogue	WJ01mstead
GHCunningham	TFDorian
EDO R/F	GT #12903
CA	OELD R/F
OELD S/F	Regs R/F
Central File	

OFFICE	: OELD	: OELD	: ELD <i>gfc</i>	: EDO	: OCA	:	:
NAME	: TFDorian:js	: RLForner	: GHCunningham	: WJDircks	:	:	:
DATE	: 3/ /83	: 3/ /83	: 3/27/83	: 3/ /83	: 3/ /83	:	:



AA61-2

PDR

wo
Down

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

cc T Down

March 24, 1983

MEMORANDUM FOR: Chairman Palladino

FROM: *HAEP* Herzl H.E. Plaine, General Counsel
JHC Guy H. Cunningham, Executive Legal Director

SUBJECT: LEGISLATIVE HISTORY OF SHOLLY AMENDMENT
 -- APPLICABILITY TO SPENT FUEL POOL
 RERACKING

We have reviewed the legislative history of Section 12 of P.L. 97-415, the so-called Sholly amendment, to see what references were made regarding whether authorizations for spent fuel pool expansion or reracking should be deemed to involve significant hazards considerations.

The first reference to the subject occurred in the House of Representatives on November 5, 1981 when the House version of the bill (H.R. 4255) was considered and passed.

Mrs. SNOWE. Would the gentleman anticipate this no significant hazards consideration would not apply to license amendments regarding the expansion of a nuclear reactor's spent fuel storage capacity or the reracking of spent fuel pools?

Mr. OTTINGER. If the gentlewoman will yield, the expansion of spent fuel pool and the reracking of the spent fuel pools are clearly matters which raise significant hazards considerations, and thus amendments for such purposes could not, under section 11(a), be issued prior to the conduct or completion of any requested hearing or without advance notice.

(127 Cong. Record H 8156)

On the Senate side, the only reference to this topic is the language in the Report of the Committee on Environment and Public Works recommending approval of S.1207.

The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable draw a clear distinction between license amendments that involve a significant hazards

dupe

8402170387

consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that, consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools. Moreover, it expects that the Commission, to the extent practicable, will develop and promulgate standards that can be applied with ease and certainty. In addition, the determination of "no significant hazards consideration" should represent a judgment on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues.

S. Rept. 97-113 p. 15.

The Conference Report is silent on the matter of spent fuel pool expansion or reracking.

Though not part of the published legislative history, there is also the exchange between Senator Mitchell and then-Majority Counsel Asselstine, quoted on page two of the March 15, 1983 letter from Senators Simpson, Hart and Mitchell:

Senator Mitchell: There is, as you know, an application for a license amendment pending on a nuclear facility in Maine which deals with the reracking storage question. And am I correct in my understanding that the NRC has already found that such applications do present significant hazards considerations and therefore that petition and similar petitions would be unaffected by the proposed amendment?

Mr. Asselstine: That is correct, Senator. The Commission has never been able to categorize the spent fuel storage as a no significant hazards consideration.

In conclusion, we observe that although discussion of this issue is sparse, every reference, on both the House and Senate sides, reflects an understanding that expansion and reracking of spent fuel pools are matters which involve significant hazards considerations.

cc: Commissioner Gilinsky
 Commissioner Ahearne
 Commissioner Roberts
 Commissioner Asselstine
 OPE
 EDO
 ELD
 SECY



AA61-2

PDR

Wo
Doran

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

March 24, 1983

MEMORANDUM FOR: Chairman Palladino

FROM: *HAEP* Herzel H.E. Plaine, General Counsel
JHC Guy H. Cunningham, Executive Legal Director

SUBJECT: LEGISLATIVE HISTORY OF SHOLLY AMENDMENT
-- APPLICABILITY TO SPENT FUEL POOL
RERACKING

We have reviewed the legislative history of Section 12 of P.L. 97-415, the so-called Sholly amendment, to see what references were made regarding whether authorizations for spent fuel pool expansion or reracking should be deemed to involve significant hazards considerations.

The first reference to the subject occurred in the House of Representatives on November 5, 1981 when the House version of the bill (H.R. 4255) was considered and passed.

Mrs. SNOWE. Would the gentleman anticipate this no significant hazards consideration would not apply to license amendments regarding the expansion of a nuclear reactor's spent fuel storage capacity or the reracking of spent fuel pools?

Mr. OTTINGER. If the gentlewoman will yield, the expansion of spent fuel pool and the reracking of the spent fuel pools are clearly matters which raise significant hazards considerations, and thus amendments for such purposes could not, under section 11(a), be issued prior to the conduct or completion of any requested hearing or without advance notice.

(127 Cong. Record H 8156)

On the Senate side, the only reference to this topic is the language in the Report of the Committee on Environment and Public Works recommending approval of S.1207.

The Committee recognizes that reasonable persons may differ on whether a license amendment involves a significant hazards consideration. Therefore, the Committee expects the Commission to develop and promulgate standards that, to the maximum extent practicable draw a clear distinction between license amendments that involve a significant hazards

8402170387

consideration and those that involve no significant hazards consideration. The Committee anticipates, for example, that, consistent with prior practice, the Commission's standards would not permit a "no significant hazards consideration" determination for license amendments to permit reracking of spent fuel pools. Moreover, it expects that the Commission, to the extent practicable, will develop and promulgate standards that can be applied with ease and certainty. In addition, the determination of "no significant hazards consideration" should represent a judgment on the nature of the issues raised by the license amendment rather than a conclusion about the merits of those issues.

S. Rept. 97-113 p. 15.

The Conference Report is silent on the matter of spent fuel pool expansion or reracking.

Though not part of the published legislative history, there is also the exchange between Senator Mitchell and then-Majority Counsel Asselstine, quoted on page two of the March 15, 1983 letter from Senators Simpson, Hart and Mitchell:

Senator Mitchell: There is, as you know, an application for a license amendment pending on a nuclear facility in Maine which deals with the reracking storage question. And am I correct in my understanding that the NRC has already found that such applications do present significant hazards considerations and therefore that petition and similar petitions would be unaffected by the proposed amendment?

Mr. Asselstine: That is correct, Senator. The Commission has never been able to categorize the spent fuel storage as a no significant hazards consideration.

In conclusion, we observe that although discussion of this issue is sparse, every reference, on both the House and Senate sides, reflects an understanding that expansion and reracking of spent fuel pools are matters which involve significant hazards considerations.

cc: Commissioner Gilinsky
 Commissioner Ahearne
 Commissioner Roberts
 Commissioner Asselstine
 OPE
 EDO
 ELD
 SECY