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April 29, 1986

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Administrative Judge

In the Matter of	)	
	)	
TOLEDO EDISON COMPANY, et al.	)	Docket No. 50-346-ML
	)	
(Davis-Besse Nuclear Power Station, Unit No. 1)	)	

LICENSEE'S RESPONSE TO THE PETITION
OF THE STATE OF OHIO
FOR LEAVE TO INTERVENE

On April 14, 1986, the State of Ohio ("the State") filed a Petition for Leave to Intervene in this proceeding. In support of its petition, the State listed a number of issues it proposed to litigate. The Toledo Edison Company et al. ("Licensee") does not object to the standing of the State to intervene, but submits that the State has not raised any issues that would warrant further hearing. A number of issues raised by the State are outside the scope of this proceeding -- particularly those issues pertaining to State permits, which are beyond the NRC's jurisdiction. Other issues lack a sufficient factual basis or are premature.

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I. Introduction

This proceeding involves the authorization which the Nuclear Regulatory Commission granted Licensee to bury very low-level radioactive waste at the Davis-Besse site. The waste in question is resin from the Davis-Besse plant's secondary system demineralizer. Approval of Licensee's proposal was sought in accordance with 10 C.F.R. § 20.302(a) and IE Information Notice No. 83-05 (February 24, 1983), and was granted by the Nuclear Regulatory Commission in October, 1985.

Subsequent to this approval, several individuals and organizations requested a hearing. On February 20, 1986, the Commission instituted an informal proceeding upon these requests. Commission Order (February 20, 1986). The Commission stated inter alia that the petitions to intervene must set forth with particularity the specific aspect or aspects of the subject matter of the proceeding that the person seeks to have litigated. Id. at 3. The Commission also authorized the Presiding Officer to require whatever written submissions or documents the Presiding Officer deems necessary. Id. at 4.

On March 10, 1986, the Presiding Officer issued a Memorandum and Order providing notice of the informal proceeding and opportunity to become a party. 51 Fed. Reg. 8,920 (1986). The Order reiterated the pleading requirements that were set forth in the Commission's February 20, 1986 Order, and further provided:

> . . . [P]etitioners are to describe specifically any deficiencies in the application, cite particular sections or portions of the application which relate to the deficiency, and state in detail the reasons why a particular section or portion of the application is deficient. Petitioners must also submit all data and material in their possession which supports or illustrates each of the deficiencies complained of. Data and material from generally available publications may be cited rather than furnished. Petitioners must also state what relief they seek with respect to each of their complaints. A broad statement requesting denial or recision of the license or its amendment without stating why such extreme relief is appropriate will not satisfy the requirement to state the relief sought.

Id. (original emphasis).

II. The State's Issues

The State pleads a number of issues, which it numbers III.A through X. As discussed below, none of these issues necessitate further hearing.

Issue III.A: Groundwater Contamination

The State first contends that Licensee has not adequately explored the possiblity of groundwater contamination, and it briefly discusses four "problem" areas: site geology, soil permeability, soil suitability and geochemical reactions. Petition at 12-20. The State's discussion, however, does not explain the significance of any of these items. In this respect, the State's Petition does not meet the pleading

requirements set forth in the Presiding Officer's March 10 Memorandum and Order, and does not raise a material issue suitable for hearing.

The Presiding Officer's March 10 Memorandum and Order required petitioners to "state in detail the reasons why a particular section or portion of the application is deficient." Such an explanation is necessary to permit a determination whether a proposal issue is material. Absent such materiality, no hearing would be required, since resolution of the issue would not affect the outcome of the proceeding.

All four of the State's "problem areas" assume the existence in the waste to be buried of some substance that would have a significant health or environmental effect if it were transported by groundwater flow. However, the possible transport of waste is of no consequence. The very low levels of radioactivity in the waste are inconsequential. The concentrations of radionuclides in the waste to be buried are smaller than those permitted by NRC regulations to be released in effluent to an unrestricted area. Compare 50 Fed. Reg. at 41,266 with 10 C.F.R. Part 20, App. B, Table II, Column 2.1/ The dose to a hypothetical, maximally-exposed individual

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1/ The concentrations in the NRC's Environmental Assessment are given in pCi/cc, while the concentrations permitted in 10 C.F.R. Part 20 are given in µci/ml. To compare these concentrations, one should note that 1 µCi/ml = 10^6 pCi/cc.

standing on top of the burial ground, drinking groundwater, and ingesting plants grown on the burial ground would be many times smaller than that due to exposure to natural background radiation.2/ See 50 Fed. Reg. at 41,266. Furthermore, as indicated in the Supplemental Information submitted by Licensee to the NRC Staff on July 30, 1984, there are no known chemical contaminants in the waste that makes it unsuitable for burial. See also Appendix I to the State's petition (the material safety data sheets for the resins).3/ The resins themselves are insoluble. Id. Given the available information indicating that the waste to be buried is harmless, the possibility that waste might be subject to groundwater transport is immaterial. For this reason, there is no need for the detailed discussion of groundwater called for by the State.

2/ At page 10 of its petition, the State asserts that Licensee should handle the waste "in the safest possible manner" regardless of whether radiation levels are high or low." The NRC's standard for radiation levels, however, is "as low as reasonably achievable" (ALARA). See 10 C.F.R. Part 50, App. I; 10 C.F.R. § 20.1(c).

3/ At page 11 of its petition, the State remarks that the waste has not been tested for chemical contaminants. Such testing is presently being performed at the State's request. In the unlikely event these tests reveal any hazardous contaminant, reassessment of the environmental impact of waste burial might then be appropriate. At present, however, there is no basis to assume the existence of such contaminants. The material safety data sheets for the resins indicate they are innocuous. The State's claim is premature. See Duke Power Co. (Catawba Nuclear Station, Units 1 and 2), CLI-83-19, 17 N.R.C. 1041 (1983).

In addition, although the specific information called for by the State with respect to the four "problem areas" is not yet available, the availability of other information (unchallenged by the State) is more than adequate to resolve the State's concerns. The State alleges that "Toledo Edison has made unsupported geological assumptions without specific on-site testing of the disposal site." Petition at 12. It is true that at the time of Licensee's application, no soil testing had been performed at the specific site where the waste is to be buried. However, extensive geological investigations have been conducted of the entire Davis-Besse site in conjunction with reactor licensing, and the geological and hydrological characteristics of the site have been determined. This information is contained in Appendix 2C of the Davis-Besse Unit 1 FSAR. This information indicates that the geological and hydrological characteristics are fairly uniform over the site. Furthermore, several core borings were drilled in the vicinity of the burial ground. In sum, there is adequate data on the record to support Licensee's conclusions as to the geological features of the proposed burial location.

The investigations show that subsurface conditions in the site area consist of clays (a glaciolacustrine deposit atop a till deposit) overlying bedrock. Davis-Besse Unit 1 FSAR at 2C-1. The investigations revealed no sand layers such as are suggested by the State. See Petition at 13-14. No major zones

of seepage were observed in either the glaciolacustrine or the till deposit even when excavations were opened for several years during plant construction.

Similarly, with regard to "soil permeability," Licensee's prior site investigations provide an ample basis to evaluate the burial site. The glacial clay deposits discovered during site investigations are soils with very low permeability. The permeability value (less than 10^{-6} cm/sec) assigned to the clay soil is a conservative upper-bound. Davis-Besse Unit 1 FSAR at 2C-76. The data from site investigations also indicate that there are not more-permeable joints in the glacial deposits that might facilitate groundwater flow.

The State's reference to geological data from other, off-site regions can be interpreted to support rather than contradict Licensee's assessment. For example, Appendix P to the State's petition (a report on the November 1972 storm on Lake Erie) states at page 3, "Because most of the land bordering the lake at the western end is clay, the water was unable to percolate downward; in areas like Reno Beach and Howard Farm's Beach, the ground was covered by water to a depth of several feet for many days." This statement illustrates the very low permeability of the glacial clays in the region.

Regarding the suitability of soil for landfill, the glacial deposits (clays) at the Davis-Besse site occur naturally at a water content close to what is defined as the optimum

water content for maximum compaction. Davis-Besse Unit 1 FSAR at 2C-134. Essentially identical glacial deposits are used at numerous landfills in the midwestern area (including the western area of Lake Erie). The clays are not susceptible enough to shrinkage and cracking to make them unsuitable for this use.

Finally, glacial soils such as those at Davis-Besse would be generally expected to have no adverse geochemical reaction with the buried waste. The State's petition provides no basis to assume otherwise. However, even if one assumes that groundwater was able to scavenge radioactive ions from the resins and was able to seep through the very low permeability clay soil at the site, the radionuclicle concentrations in groundwater would necessarily be smaller than those permitted under 10 C.F.R. Part 20 in effluents released to unrestricted areas, and these concentrations would be further reduced by decay, dispersion, dilution, and radionuclide adsorption.

Issue IV: Flooding and Storm Damage

The State's discussion of flooding and storm damage similarly does not meet the pleading requirements established in the March 10 Memorandum and Order. There is no explanation why flooding or storm damage is significant. Again, the State ignores the inconsequential level of radioactivity in the waste to be buried, the absence of any harmful chemical contaminants, and the insolubility of the resins. Even if one assumes that

the burial ground might be flooded, and if one further assumes that as a result of the flooding some amount of buried waste is transported somewhere by some process unexplained by the State, the harmless nature of the waste to be buried renders the scenario immaterial.

The State suggests that flooding has not been addressed by Licensee. See Petition at 22. Flooding is comprehensively analyzed in the sections 2.4.2 - 2.4.7 of the Davis-Besse Unit 1 FSAR and similar sections in the FSAR for Davis-Besse Units 2 and 3.

Issue V: Wildlife Protection

In its Issue V, the State concludes that "Licensee has not ascertained with any degree of certainty that the low level radiation or potential geochemical reactions associated with the burial project will not result in adverse impact on fish or precious wildlife resources." Petition at 23. The State, however, provides no detailed discussion as was required by the March 10 Memorandum and Order. It offers no citations, and no data, materials, or references.

Moreover, in the absence of explanation and data, there is no material issue suitable for hearing. The State makes no showing that the extremely small levels of radioactivity in the waste to be buried or its innocuous chemical content would have any effect on wildlife. The State does not even suggest it.

Compare Davis-Besse FES (March 1973) at § 5.6 (at dose levels associated with plant operation, no deleterious effects are anticipated for any biota in the area). Accord, Toledo Edison Co. (Davis-Besse Nuclear Power Station), LBP-73-30, 6 A.E.C. 691, 705-06, 711 (1978).

The State's claim for relief designated by the letter (b), see Petition at 24, asserts that "Licensee should be required to develop a plan to determine what effects the present temporary disposal method (the settling ponds) has had on resident species of fish and wildlife before permitting the permanent disposal of waste on-site." The use of settling ponds is an activity already authorized in conjunction with the operation of Davis-Besse Unit 1, and their operation and effect are beyond the scope of this proceeding.

Issue VI.A: Whether an Environmental Impact Statement is Needed

The State next contends that in deciding not to prepare an Environmental Impact Statement (EIS), the NRC ignored the requirement of Section 102(2)(A) of the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(A), which requires Federal agencies to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and environmental design arts in planning and decision-making which will have an impact on man's

environment." Petition at 24-25. Section 102(2)(A), however, is a broad statement of policy, and the State does not explain how the NRC failed to meet this standard. The State offers no specifics, and points to no particular deficiencies in the NRC's Environmental Assessment and Finding of No Significant Impact. The State's conclusory assertion does not establish an issue to be litigated.

An agency need not prepare an EIS if it determines that a proposed action will not have a significant environmental impact. See 42 U.S.C. § 4332(2)(C) (1982). An agency makes this determination after preparing an Environmental Assessment (EA). An EA is a "concise" and "brief" statement providing sufficient evidence and analysis to support the determination. 40 C.F.R. § 1508.9 (1985); 10 C.F.R. § 51.30 (1985); Lower Alloways Creek v. Public Service Electric & Gas Co., 687 F.2d 732, 741 (3d Cir. 1982). The agency then issues a Finding of No Significant Impact which either incorporates or summarizes the EA. 40 C.F.R. § 1508.13 (1985); 10 C.F.R. § 51.32 (1985).

Under even the most stringent judicially imposed standards, a Finding of No Significant Impact is sufficient if it indicates that the agency took a "hard look" at the matter, identified relevant areas of environmental concern, and made a convincing case that the impact is insignificant. Northern Indiana Public Service Co. (Bailly Generating Station, Nuclear 1), ALAB-303, 2 N.R.C. 858, 875-76 (1975), citing Maryland

National Cap. Pk. & Pl. Comm. v. U.S. Postal Service, 487 F.2d 1029, 1039-40 (D.C. Cir. 1973). Here, the NRC has determined that the levels of radioactivity in the waste to be buried are inconsequential. The average concentrations of the principal radionuclides that would be in the waste are smaller than the concentrations permissible in water released to an unrestricted area. Compare 50 Fed. Reg. at 41,266 with 10 C.F.R. Part 20, App. B, Table II, Column 2. The dose to a maximally exposed member of the public from the most likely exposure pathway would be less than 1 mrem/yr to the total body. 50 Fed. Reg. at 41,266. The hypothetical dose to an individual ingesting food grown on the disposal site (and of course there is no such produce) would be less than 3 mrem/yr. The dose to an individual drinking groundwater would be less than 0.1 mrem/yr. In contrast, the dose to an individual due to exposure to natural background radiation is about 100 mrem in Ohio. Id. The NRC Staff further determined that the minor change in land use was insignificant, and that the levels of radioactivity in the waste are so low that its burial would not prevent release of the site for restricted use at the time of decommissioning (i.e. there will be no appreciable residual radioactivity). Id. at 41,267. The NRC also referenced Licensee's initial request for approval and the supplement information that the NRC had required. Id. This information included Licensee's determination that there are no known chemical contaminants in the

waste that would make it unsuitable for burial. See Letter from R. Crouse to M. Stolz (July 30, 1984), Attachment 1 at 2; see also State Petition, App. I.

The State does not take issue with any of these determinations. A petitioner "is obligated to demonstrate specifically how and why the Commission's finding of 'no significant impact' was somehow erroneous or unreasonable." Lower Alloways Creek, 687 F.2d at 743. It is incumbent upon a petitioner to structure its participation "so that it is meaningful, so that it alerts the agency to the [petitioner's] position and contentions." Id., quoting Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc., 435 U.S. 519, 553 (1978).

> [C]omments must be significant enough to step over the threshold requirement of materiality before any lack of agency response or consideration becomes of concern. The comment cannot merely state that a particular mistake was made . . .; it must show why the mistake was of possible significance to the results.

Id., quoting Portland Cement Ass'n v. Ruckelshaus, 486 F.2d 375, 394 (D.C. Cir. 1973), cert. denied sub nom., Portland Cement Corp. v. EPA, 417 U.S. 921 (1974).

It may have been the State's intention to base its NEPA argument on Issues III.A (Groundwater), IV (Flooding), and V (Wildlife Protection) of its petition. See Petition at 25. However, even if the discussion of these issues was

incorporated into the State's contention that a full EIS need be prepared, the State's contention would still not meet pleading requirements. There is no discussion in the State's petition of the significance of the dredged material leaching into groundwater, being carried away by flooding, or impacting on wildlife. As already stated, the levels of radioactivity in the waste to be buried are inconsequential, and the material is chemically innocuous.

Issue VI.B: Whether Further Evaluation of Alternatives is Necessary

The State also contends that the NRC has not satisfied section 102(2)(E) of NEPA, which requires an agency to study, develop and describe appropriate alternatives to any action in any proposal which involves "unresolved conflicts concerning alternative uses of available resources." 42 U.S.C. § 4332(2)(E) (1982). This requirement is distinct from section 102(2)(C) of NEPA. Consumers Power Co. (Big Rock Point Nuclear Plant), ALAB-636, 13 N.R.C. 312, 332 n.41 (1981). The State, however, does not demonstrate the existence of an "unresolved conflict concerning alternative uses of available resources." Without such demonstration, the mandate of section 102(2)(E) does not come into play. See Virginia Electric and Power Co. (North Anna Nuclear Power Station, Units 1 and 2), ALAB-584, 11 N.R.C. 451, 457 (1980).

The burial of very low level waste at Davis-Besse does not involve an "unresolved conflict concerning alternative uses of available resources." The Davis-Besse site, including the burial ground, is already dedicated to use for a nuclear facility. With respect to the burial of very low level radioactive waste, the NRC has determined that there will be no significant environmental impact, that the principal result of this action involving the use of resources not previously considered in the Davis-Besse Unit 1 FES is the minor change in land use associated with operating support of the facility, and that the burial would not prevent release of the land for unrestricted use at the time Davis-Besse is eventually decommissioned. 50 Fed. Reg. at 41,267.

These determinations obviate any further evaluation of alternatives. "[N]either section 102(2)(C) nor section 102(2)(E) of NEPA obligates the federal agency 'to search out possible alternatives to a course which itself will not either harm the environment or bring into serious question the manner in which this country's resources are being expended." Duke Power Co. (Amendment to Materials License SNM-1773 -- Transportation of Spent Fuel From Oconnee Nuclear Station for Storage at McGuire Nuclear Station), ALAB-651, 14 N.R.C. 307, 321-22 (1981); Portland General Electric Co. (Trojan Nuclear Plant), ALAB-531, 9 N.R.C. 263, 266 (1979). Having determined that no unresolved conflict concerning alternative uses of available

resources existed, the NRC correctly concluded that no further evaluation of alternatives was required.

Furthermore, even if section 102(2)(E) were invoked, its mandate would be satisfied by the evaluation which has been conducted of the only alternative to burial, i.e., off-site disposal, which as discussed below the NRC has studied and developed in depth. The authorization granted by the NRC to Licensee to bury very low level waste is directly attributable to that study.

The Commission's efforts to study and develop licensing criteria for low level radioactive waste disposal sites commenced in 1978 and culminated with the publication of 10 C.F.R. Part 61 in December, 1982. See 47 Fed. Reg. 57,446 (1982). The NRC's environmental evaluation of low-level radioactive waste disposal sites is contained in NUREG-0782, the Draft Environmental Impact Statement on 10 C.F.R. Part 61: "Licensing Requirements for Land Disposal of Radioactive Waste" (Sept. 1981), and NUREG-0945, the Final Environmental Impact Statement on 10 C.F.R. Part 61 "Licensing Requirements for Land Disposal of Radioactive Waste" (Nov. 1982). NUREG-0945 is a three-volume, 1000 page report.

Stemming from this effort was the realization that the volume of low-level waste shipped to commercial disposal sites had to be minimized. The Commission therefore issued a policy statement to that effect. Policy Statement on Low Level Waste

Volume Reduction, 46 Fed. Reg. 51,100 (1981). This policy is intended to extend the operational lifetime of the existing low-level disposal sites, alleviate concern for adequate storage capacity if there are delays in establishing additional regional sites, and reduce the number of waste shipments. Id.

In the same vein, the Commission recognized the need for a de minimis classification of wastes, to be exempted on a case by case basis from Part 61 and considered of no regulatory concern. 46 Fed. Reg. 38,081, 38,085 (1981). In the statement accompanying the final Part 61 rule, the Commission stated

> The Commission agrees with the importance of setting timely standards for disposal of certain wastes by less restrictive means. The Commission agrees with the commenters that establishment of such de minimis levels would reduce costs of disposal for many licensees and would also conserve space in disposal facilities which are otherwise designed for wastes having much higher activities. The Commission also believes that establishment of de minimis levels is important in enhancing overall stability of a disposal facility, and therefore in reducing potential long-term site maintenance and corresponding costs, since de minimis levels would reduce the volume of Class A waste. This would also tend to reduce ground water migration impacts, since subsidence and water infiltration would be reduced.

47 Fed. Reg. 57,446, 57,453 (1982). The Commission invited licensees to continue to request amendments for alternative disposal methods for the licensee's own waste pursuant to 10 C.F.R. § 20.302. Id. Thereafter, the NRC issued IE

Information Notice No. 83-05, "Obtaining Approval for Disposing of Very-Low-Level Radioactive Waste -- 10 C.F.R. Section 20.302." (Feb. 24, 1983), pursuant to which Licensee sought the approval that is the subject of this proceeding. The Commission's policy to minimize the volume of low-level waste delivered to disposal sites has now been made a Congressional mandate. Low Level Radioactive Waste Policy Amendments Act of 1985, Pub. L. No. 99-240, §§ 6(i), 10, 99 Stat. 1842, 1857, 1859 (1986).

Thus, it is evident that the authorization to bury very low level waste at Davis-Besse was granted by the NRC only after and as a result of its studying and developing provisions governing off-site disposal. The NRC's action reflects an informed and a reasonable choice among alternatives. The State's petition provides no basis to dispute that choice.4/

4/ The State incorrectly states that "[t]he Licensee has admitted that the cost of disposing of these materials off-site is a mere $72,000 over the entire operating life of the facility. Additionally, the amount of material to be dredged and disposed of represents only 200 cubic feet of material per year." Petition at 27. The Davis-Besse plant produces 20 cubic feet of resin per week, or about 1000 cubic feet of resin per year. This resin becomes mixed with a much greater quantity of water treatment plant sludge also discharged to the settling basins. The estimated volume of material to be dredged from the settling basins (resins and sludge) is estimated to be about 34,000 ft3 for a five-year period. Letter from Toledo Edison to NRC (July 30, 1984), "Attachment 1 (Supplemental Information) at 1-3; 50 Fed. Reg. at 41,266. The $60 per cubic foot disposal cost that can be inferred from Licensee's May 1983 report does not include the cost of handling, storage,

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Issue VII: Endangered Species

In issue VII, the State contends that the NRC has violated Section 7 of the Endangered Species Act of 1973, by failing to take steps "necessary to ensure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of [listed] endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected states, to be critical." Petition at 28. The State asserts that there has been no consultation as directed by Section 7. Id., citing National Wildlife Federation v. Coleman, 529 F.2d 359 (5th Cir. 1976).

National Wildlife Federation v. Coleman holds that "Federal agencies are required to consult and obtain the assistance of the Secretary before taking any action which may affect endangered species or critical habitat." 529 F.2d at 371 (emphasis added). In the same vein, the Endangered Species Act states, ". . . a Federal agency shall consult with the

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treatment, and packaging. Disposal of Low Level Radioactively Contaminated Secondary-Side Clean-up Resins in the On-site Settling Basins at the Davis-Besse Nuclear Power Station (May 1983) at 9. These items would double the cost. Id. Moreover, disposal costs have risen and can be expected to rise further. See Low Level Radioactive Waste Policy Amendments Acts of 1985, § 5.

Secretary on any prospective agency action at the request of, and in cooperation with, the prospective permit or license applicant if the applicant has reason to believe that an endangered species or threatened species may be present in the area affected by his project and that implementation of such action will likely affect such species." 16 U.S.C. § 1536(a)(3) (1982) (emphasis added).

Here, there has been a determination that there will be no significant environmental impact. The levels of radioactivity in the waste are de minimis, the chemical content of the material is innocuous, and the minor change in on-site land usage is insignificant. In addition, studies of the bird populations at the Davis-Besse site have been conducted over a nine year period and reported to the NRC in Licensee's Annual Environmental Operating Reports. At no time was any endangered species found inhabiting the site. The particular burial site is not part of a marsh habitat and is not a principal nesting, feeding, or roosting site for any birds. Nor is it important to any mammalian or reptile species. There is therefore no indication that the burial of the waste "will likely affect such species," and the consultation provision of Section 7 of the Endangered Species Act is not invoked.

The State's petition, on the other hand, provides no basis to suggest that the burial of the waste in question will affect any endangered species. There is no detailed discussion, no

supporting data, materials, or references. In fact, the State does not even allege that any endangered species would be affected. For these reasons, the Endangered Species Act should not be an issue in this proceeding.

Issues VIII, IX, and X: Approvals by Agencies Other than the NRC

At pages 29-31 of its petition, the State contends that Licensee must comply with Ohio's Solid Waste Disposal Regulations, must obtain a Water Quality Certification from the Ohio Environmental Protection Agency, and must obtain from the State a Certificate of Environmental Compatability and Public Need. These contentions are outside the scope of this proceeding.

There are only two issues before the Presiding Officer in this proceeding: (1) whether the burial of very low level radioactive waste is radiologically safe; and (2) whether NEPA has been satisfied. If the Presiding Officer resolves these issues in Licensee's favor, it must affirm the authorization granted Licensee by the NRC to bury very low level radioactive waste at Davis-Besse.

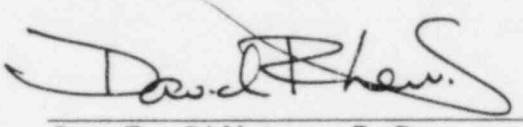
Neither the NRC's initial authorization nor the Presiding Officer's ultimate decision affects other required permits or approvals. Licensee must obtain whatever permits or approvals are necessary before it can bury the waste. Whether or not such permits are necessary or should be granted, however, is a

matter to be decided by the pertinent agencies, and not in this proceeding. The Presiding Officer should neither attempt to predict nor await the outcome of State permit proceedings. Southern California Edison Co. (San Onofre Nuclear Generating Station, Units 2 and 3), ALAB-189, 7 A.E.C. 410 (1974). Contentions VIII, IX, and X are therefore irrelevant.

III. Conclusion

For the reasons stated above, Licensee submits that the issues raised in the State's petition should be dismissed or alternatively resolved summarily in Licensee's favor.

Respectfully submitted,



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Dated: April 29, 1986

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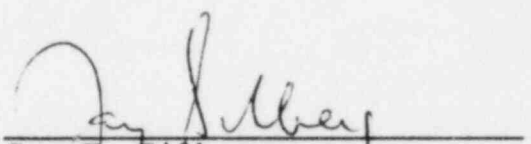
CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing LICENSEE'S RESPONSE OPPOSING THE PETITION OF STATE OF OHIO FOR LEAVE TO INTERVENE was mailed, first class mail, postage pre-paid, to the attached service list, this 29th day of April, 1986.



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