

November 22, 1996

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

Karen D. Cyr
General Counsel

FROM: John C. Hoyle, Secretary /s/

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 1:30 P.M.,
FRIDAY, NOVEMBER 22, 1996, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-96-235 - Petitions for Commission Review of Director's Decision on Certification of Gaseous Diffusion Plants

The Commission approved a Memorandum and Order responding to petitions for review of the September 19, 1996 decision by the Director, Office of Nuclear Material Safety and Safeguards on the certification of gaseous diffusion plants at Paducah, Kentucky and at Piketon, Ohio. The Memorandum and Order rejected one late filed petition, denied two requests for reconsideration of two previously rejected petitions, addressed the remaining contentions raised in the valid petitions, and denied all remaining contentions in the petitions. The proposed memorandum and order has been modified as noted in the attachment.

Commissioner Dicus did not participate in this matter.

(Subsequently, on November 22, 1996, the Secretary signed the Order.)

Attachment:
As stated

cc: Chairman Jackson
Commissioner Rogers
Commissioner Dicus
Commissioner Diaz
Commissioner McGaffigan
OGC
OCAA
OCA
OIG
Office Directors, Regions, ACRS, ACNW, ASLBP (via E-Mail)
PDR - Advance
DCS - P1-24

Changes to the Memorandum and Order proposed in SECY-96-235

<u>Page</u>	<u>Change</u>
6	In line 5 (from the top), insert the word "and" before the word "from." In footnote 5, replace the words "Donham/Hansen petition" with "petition filed by Mark Donham and Kristi Hanson."
7	In line 4 (from the top), insert the word "the" before the word "Coalition."
9	In the first line, replace "We therefore" with "Thus, we." In the third line from the bottom, replace "limitation on" with "categories of."
10	In the third line from the bottom, delete the parenthetical phrase.
13	In the second full paragraph, move the last sentence (which begins with "Examples of specific topics...") to place it before the second sentence (which begins "On the basis of the...").
24	In the fifth line from the bottom, insert the words "they are" before the word "privatized."
31	After item 5., add the sentence "Commissioner Dicus did not participate in this matter."

compliance plans¹ prepared by the U. S. Department of Energy (DOE) and submitted by USEC.

USEC, or any person whose interest may be affected and who had submitted written comments in response to the prior Federal Register Notice on the application or compliance plan under 10 C. F. R. § 76.37, or provided oral comments at an NRC meeting held on the application or compliance plan under 10 C. F. R. § 76.39, were eligible to file a petition to the Commission requesting review of the Director's decision within 15 days after publication of the Director's decision. 10 C. F. R. § 76.62(c).²

The NRC received five petitions for review of the Director's decision. A previous memorandum and order issued by the Commission in this proceeding, on October 18, 1996 (CLI-96-10), rejected two of these five petitions for failure to meet the eligibility requirements of 10 C. F. R. § 76.62(c). The two rejected petitioners have petitioned for reconsideration. The

¹ The compliance plans set forth USEC's plan and schedule for achieving full compliance with NRC regulatory requirements.

² Notice of receipt of the application had appeared in the Federal Register (60 Fed. Reg. 49026) on September 21, 1995, allowing for a 45-day public comment period on the application and noticing public meetings to solicit public input on the certification. A second notice appeared in the Federal Register (60 Fed. Reg. 57253) on November 14, 1995, providing for a 45-day public comment period on the compliance plan. Public meetings were held on November 28, 1995, in Piketon, Ohio, and on December 5, 1995, in Paducah, Kentucky.

Commission's previous memorandum and order also addressed certain threshold procedural matters raised in the remaining petitions, denying a request for an additional period for seeking review and submitting comment on the Director's decision, and denying a request for expansion of the right to seek the Commission's review of the Director's decision to any person.

This memorandum and order addresses the two petitions for reconsideration and the remaining issues raised in the petitions not previously rejected. For the reasons set forth below, these petitions are rejected in their entirety.

II. Petitions for Reconsideration

The Commission has received two petitions for reconsideration of the Commission's memorandum and order served October 18, 1996:

1. By a pleading dated October 24, 1996, Diana Salisbury, of Sardinia, Ohio, requested that the Commission reconsider its Memorandum and Order of October 18, 1996, and review her petition dated October 3, 1996 and amendment dated October 4, 1996.

2. By a pleading entitled "Verified Complaint, Administrative Petition for Action," dated October 25, 1996, Neilly Buckalew, Director, Kwanitewk NATIVE Resource/Network, of Meriden, New Hampshire, requested that the Commission reconsider its Memorandum and Order of October 18, 1996, CLI-96-10, and review their October petition.

The Commission rejected both of these petitioners' petitions for review of the Director's decision for failure to comply with the eligibility requirements in 10 C.F.R. § 76.62(c). That provision requires prior participation in the certification proceeding by submission of either written comments or oral comments at a public meeting. The Commission provided a full opportunity for members of the public to submit timely written or oral comments during the proceeding. See note 2, supra. The Commission explicitly informed the public of the requirement to submit written or oral comments in order to be eligible to petition for review of the Director's decision in the Federal Register notices. Id.

Both petitioners cite 5 U.S.C. § 553(e), a provision of the Administrative Procedure Act (APA), giving interested persons the

right to petition for the issuance, amendment, or repeal of a rule. However, if petitioners wish to exercise their right to petition for a change in the eligibility rule in § 76.62(c), they must do so in a petition for rulemaking under 10 C.F.R. § 2.802, stating their basis for requesting the rule change.

Additionally, the cited section of the APA is inapplicable to support petitioners' right to petition for review of the Director's decision, which is in the nature of an adjudication, not a rule.

Petitioners do have the right to challenge the Commission decision dismissing their petitions for review of the Director's decision. However, petitioners have presented no information which would indicate that the previous decision was in error and have presented no new information which would justify reconsideration.

Petitioners also state various arguments to support the assertions that they are persons "whose interest may be affected" (10 C.F.R. § 76.62(c)) and therefore are eligible to petition for review of the Director's decision. However, since petitioners

have not satisfied the prior participation requirement stated in the rule³, we need not address these arguments.

Therefore these petitions are denied.

III. Petitions for Review

The three remaining petitions and related NRC actions to date are as follows:

1. By letter dated September 30, 1996, Vina K. Colley of McDermott, Ohio, who serves as President of P. R. E. S. S., Portsmouth-Piketon Residents for Environmental Safety and Security, petitioned for Commission review of the Director's decision. Her petition (hereafter referred to as the "Colley petition") was docketed at the NRC on October 4, 1996. Ms. Colley had spoken at the NRC's public meeting in Piketon, Ohio, on November 28, 1995, regarding the application and compliance plan. On October 4, 1996, the Secretary of the Commission served

³ Petitioner Salisbury asserts that § 76.62(c) is grammatically constructed to create two separate categories of eligibility: "The corporation or any person whose interest may be affected" and "who had submitted comments in response to the Federal Register notice..." However it is evident by the placement of the comma after "Corporation," the lack of a comma after the clause "any person whose interest may be affected," and the use of the pronoun "who" rather than "any person who" in the clause about submission of comments, that petitioner's interpretation is in error.

a copy of the Colley petition on USEC and persons who had provided written comments on the application or compliance plan during the comment period or had provided oral comments at a meeting held on the application and compliance plan. The Secretary invited those served to file comments on Ms. Colley's petition by October 15, 1996. Comments were subsequently received from Ronald Lamb⁴, dated October 14, 1996, from Jotilley Dortch⁵, dated October 15, 1996, and from USEC, dated October 15, 1996.

2. By letter dated October 2, 1996, two individuals, Mark Donham and Kristi Hanson, of Brookport, Illinois, petitioned for review. Mr. Donham had spoken at the NRC's public meeting in Paducah, Kentucky, and Donham and Hanson had jointly submitted written comments during the comment period. The petition (hereafter referred to as the "Donham/Hanson petition") was docketed at the NRC on October 8, 1996. On October 9, 1996, the Secretary served the petition on the service list, and invited

⁴ The response of Ronald Lamb stated its support of the objections of the Colley petition without further elaboration.

⁵ Although the letter filing of Jotilley Dortch purports to be a response to both the Colley petition and the petition filed by Mark Donham and Kristi Hanson, it does not address the issues raised in either petition, but instead raises new issues. Therefore this correspondence will not be considered as a response to the petitions but will be forwarded to the staff for appropriate response.

those served to comment on this petition by October 21, 1996. Comments were subsequently received from Jotilley Dortch (see note 5), dated October 15, 1996, from USEC, dated October 21, 1996, and from the U.S. Environmental Protection Agency (EPA), Region 5, dated October 22, 1996.⁶

3. By letter dated October 10, 1996, A. B. Puckett, member of the Coalition for Health Concern, of Kevil, Kentucky, petitioned for review. Mr. Puckett had spoken at the public meeting in Paducah, Kentucky.

IV. Dismissal of Late Petition

The petition of A. B. Puckett was dated October 10, 1996 and postmarked October 14, 1996. Under § 76.62(c), the 15 day period for petitions for review of the Director's decision commenced with the publication of the Federal Register notice on September 19, 1996, and concluded on October 4, 1996. Therefore, Mr. Puckett's petition was untimely filed.

⁶ The response of EPA, Region 5, commented on the Donham/Hanson petition's request for more time for public comment. This portion of that petition was considered and denied in CLI-96-10.

This petitioner does not even refer to the untimely filing, let alone attempt to establish that there is good cause to accept the late filing. See 10 C.F.R. § 76.74(b) ("good cause" required to extend time deadlines in Part 76). There is no other indication in the petition itself of late information which would plausibly excuse the late filing. Furthermore, the petition, which deals with the impacts of uranium mining and milling and of dumping nuclear waste on Indian lands, raises no issues which are directly relevant to this proceeding.

We find that petitioner has not established and we cannot otherwise conclude that there was good cause for the late filing. Therefore, the substantive matters in the petition of A. B. Puckett will be referred to the staff for an appropriate response and will not be considered by the Commission as a petition for review of the Director's decision.

V. Standing of Petitioners

Section 76.62(c) limits eligibility to petition for review of the Director's decision to those persons "whose interest may be affected" and who also have previously participated in the

proceeding by submitting written comments or oral comments at any meeting on the application or compliance plan. The phrase "whose interest may be affected" is also used in section 189a of the Atomic Energy Act concerning those who have a right to a hearing in certain proceedings.

Neither of the petitions before us directly addresses the "interested person" issue in sufficient detail. We note however, that petitioners did participate in the Piketon and Paducah public meetings and appear to live in the vicinity of the plants. In addition, this is the first time the Commission has entertained petitions under Part 76 and petitioners, who are appearing pro se, may not have understood their obligation to explain their "interested person" status. Thus, we are unwilling to hold petitioners to a formalistic pleading-type requirement and instead will assume that petitioners are "interested persons." We therefore will consider the merits of the Colley petition with regard to the Portsmouth plant and the Donham/Hanson petition with regard to the Paducah plant.

The Commission cautions, however, that in future Part 76 certification decisions, it will expect petitioners more specifically to explain their "interested person" status. For

guidance petitioners may look to the Commission's adjudicatory decisions on standing. See, e.g., Georgia Institute of Technology (Georgia Tech Research Reactor), CLI-95-12, 42 NRC 111, 115-17 (1995).

VI. Analysis and Response to Issues Raised in the Colley
Petition

The Colley petition enumerated six "comments, objections and petitions for action" which we will refer to and treat as Issues 1 through 6 using Ms. Colley's nomenclature (see Colley petition, p. 1). Issues 1, 2, and 3 dealt with threshold procedural matters -- extending the 15-day time limit for filing a timely petition for Commission review of an initial Director's decision, and expansion of the categories of persons eligible to file a petition for review of the Director's decision -- and those requests were denied in the previous Commission memorandum and order dated October 18, 1996. The remaining Issues 4, 5, and 6, are addressed here.

A. Colley Issue 4: Petition for NRC to Hold National Public Hearings

Petitioner asks that NRC hold public hearings nationally regarding the continued operation of the gaseous diffusion plants in Ohio and Kentucky. This request is made as an adjunct to petitioner's requests, previously denied, for extension of the time period for the filing of petitions and for expansion of the right to file petitions to any person. Petitioner supports her request with arguments that the continued operation of the GDPs will affect all U.S. taxpayers and that "it is U.S. taxpayer dollars that have provided the capital for these plants to operate for the last 40 years and will continue to provide the necessary funds to maintain operation of these plants..."

Prior to issuing the certification decision, the staff provided a broad opportunity for public comment by publishing Federal Register notices concerning the receipt of USEC's applications and compliance plans, and holding public meetings in the vicinity of each site. See note 2, supra. From a health and safety perspective, it is the people who live in the vicinity of the facilities who may have an interest which might be affected.

Accordingly, the NRC made special efforts to assure that those people were informed.⁷ We find that adequate opportunity for public participation in this proceeding has been provided, and that no reason is apparent either from the record or from petitioner's arguments that additional hearings would produce any significant additional information. Therefore, the request for additional public hearings is denied.

B. Colley Issue 5: Objection to the Finding of No Significant Impact Regarding USEC's Compliance Plan

Petitioner's Issue 5 is supported by 9 individual bases which petitioner labels a through i. We adopt the same labeling for convenience, and address each individual basis below.

We first address a fundamental premise raised by the petitioner regarding the Finding of No Significant Impact (FONSI). Petitioner's argument apparently rests on the belief

⁷ We note that the staff used several additional means to publicize the certification process, obtain public comments, and coordinate with other interested agencies. These included: establishment of local public document rooms near each site, press releases, notices of technical meetings with USEC open to the public, paid advertisements in local newspapers, media interviews, individual letters seeking comments from interested parties, and meetings with labor union officials, local government officials, DOE, the Environmental Protection Agency, and the Occupational Safety and Health Administration.

that the environmental assessment (EA) of the impacts of the proposed compliance plan approval should encompass all the impacts of ongoing operations, not just impacts associated with compliance plan approval. We note here that several of petitioner's nine bases for this Issue assert that there is an inadequate evaluation of the environmental impacts of ongoing or past operations, and none of the nine bases focus on any impact associated with compliance plan implementation.

As part of the same rulemaking that promulgated 10 C.F.R. Part 76, 10 C.F.R. Part 51 was modified to provide a categorical exclusion from the requirement for an environmental impact statement or environmental assessment for the "issuance, amendment, modification, or renewal of a certificate of compliance of gaseous diffusion enrichment facilities pursuant to 10 C.F.R. Part 76." 10 C.F.R. Part § 51.22(c)(19). This action was taken because the two gaseous diffusion plants had already been subject to environmental review pursuant to the National Environmental Policy Act of 1969 (NEPA) inasmuch as DOE had prepared an environmental impact statement for the Portsmouth plant, and an environmental assessment for the Paducah plant. After review of the DOE environmental analyses, and the current

operations of the plants, the NRC concluded that there were no significant differences in current operations that would result in significantly different environmental impacts from those already evaluated by DOE. See supplementary information, 59 Fed. Reg. 48944, 48958, (September 23, 1994). The NRC further concluded that since the Commission's certification requirements were intended to be at least as stringent as existing DOE requirements, certification issuance, modification, or amendment would not allow the GDPs to operate in such a way as to result in any adverse environmental effects greater than those which currently existed or would be expected absent NRC oversight, and would not have a significant effect on the human environment.

Therefore, no general review of environmental impacts associated with issuance of the certificates of compliance, as proposed by the Director's decision, is contemplated or required by NRC regulations. However, the categorical exclusion does not extend to approval of the compliance plans, and, therefore, an EA was performed by the staff for that purpose.

The Federal Register notice publishing the Director's decision included an EA of the environmental impacts associated with the contemplated approval of the USEC compliance plans.

Examples of specific topics related to the compliance plan, and included in the EA, are filter testing and air sampling. On the basis of the EA, the staff determined that there would be no significant impact associated with approval of the compliance plans and issued the FONSI.

Therefore, the petitioner's basic premise is flawed in that it wrongly presupposes that the staff was required to perform a broad environmental review of ongoing GDP operations, when in fact only an assessment of the impacts of compliance plan approval is required.

We now turn to petitioner's individual bases:

1. Colley Issue 5(a): The Notice (FONSI) is Deficient in Not Reviewing or Accounting for the Impacts Resulting from Privatization of USEC

Petitioner asserts that NRC must review and account for the "impacts, changes, and full ramifications on the operation of the two plants and environmental compliance.... from the actual process of privatization." Petitioner also asserts that "The effects of privatization on environmental compliance must be

fully analyzed including the economic ability of USEC to fully comply with environmental standards over the next projected 50 years of operation."

Petitioner's broad allegations do not contain enough detail to state a meaningful objection.⁸ More importantly, as noted above, the EA or FONSI are required to consider only environmental impacts associated with approval of the compliance plans. Since the possibility of future privatization falls outside the scope of the compliance plan and this certification, the petitioner's challenge is rejected on that basis.

2. Colley Issue 5(b): Fugitive Uranium Deposits Pose Risks of Criticality and Should Be Cleaned Up Before Certification

Petitioner is apparently referring to existing uranium deposits in plant equipment, and asserting that they could worsen with continued plant operation and pose a risk of a nuclear criticality. Petitioner refers to a National Academy of Sciences

⁸ Insofar as the petitioner's complaint may be read as a broad objection to privatization, Congress has spoken on this issue. In the USEC Privatization Act (Public Law 104-134), Congress directed USEC to implement a privatization plan to transfer the corporation to private ownership.

report, Affordable Cleanup, (National Research Council, 1996), noting that clean-up began in 1991 but is not complete.

Petitioner asks that certification be withheld until cleanup of the uranium deposits is completed, in order to protect worker safety and the public health.

It is recognized that uranium deposits can form in process equipment and piping in the GDPs. USEC is required to follow Technical Safety Requirements which provide for surveillance, detection, and safe management of uranium deposits. For example, Portsmouth Technical Safety Requirement 2.7.3.14 requires: (1) quarterly surveys for uranium deposits in the X-326 cascade facility, (2) measures to assure criticality safety if identified deposits are above a certain size, and (3) actions to safely stabilize or remove deposits.

The clean-up that began in 1991 and referred to in the National Research Council's report is the DOE high-enriched uranium suspension program. When it was determined that additional high-enriched uranium was no longer needed for defense purposes, a decision was made that the Portsmouth high enrichment equipment could be retired from service. DOE has informed the

NRC that significant deposits have been removed and the equipment has been retired in place.

Petitioner has offered no substantial basis for finding that the issue of uranium deposits has not been appropriately addressed by USEC and reviewed by the staff. Therefore, we reject this issue as a basis for challenging the Director's decision.

3. Colley Issue 5(c): Certification Should Be Withheld Until the Synergistic Impacts of Releases of Asbestos, Lead, Other Heavy Metals, and Uranium Are Analyzed

Petitioner asserts that NRC has not reviewed the synergistic impacts of asbestos, lead, and other heavy metals, in addition to uranium, on workers or the public, and asks that certification be withheld until such impacts are fully documented and analyzed. (Petitioner also raises the issue of synergistic effects under Issue 5(f) below.)

The Energy Policy Act of 1992 required NRC to establish standards for the GDPs to protect the public health and safety from radiological hazards. The NRC staff's review and the

Director's decision are based on a determination that USEC's applications and compliance plans meet the standards NRC established for protection of public health and safety from radiological hazards associated with GDP operation. The basis for this determination is documented in the NRC staff's Compliance Evaluation Reports.

The hazards from asbestos, lead, and heavy metals which petitioner cites are regulated by the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA), and USEC must comply with OSHA and EPA regulations. Petitioner has not provided any information to indicate that these non-radiological substances are present in quantities which pose a health hazard, either by themselves or in combination with uranium, or that any such hazard falls under NRC jurisdiction over radiological hazards. Therefore we reject petitioner's request to withhold certification on account of synergistic impacts, and also reject this basis for finding the staff's EA and FONSI defective.

4. Colley Issue 5(d): Aging of Buildings Poses Significant Risks to Public Health, Worker Safety, and the Environment, Including Major Water Bodies

Petitioner contends that the GDPs pose a significant contamination risk due to plant age, and that decontamination and decommissioning should commence immediately. However, petitioner offers no information in support of her claim of significant risk. The report cited by petitioner as supporting her position ("Affordable Cleanup", National Research Council, 1996), addresses decommissioning issues but does not indicate that the operating plants pose a significant health risk.

Petitioner also alleges that there is a possibility of significant underground water contamination, and asserts that to allow the plants to operate in noncompliance will put major water bodies, including the Ohio River, at great risk. Petitioner provides no information in support of her argument and fails to demonstrate a relationship to the compliance plans or the staff's EA or FONSI.

In its Compliance Evaluation Report, the staff determined that the Portsmouth effluent control program is in compliance

with NRC requirements. Therefore, the Portsmouth compliance plan includes no requirement for new actions to control effluents. Petitioner does not challenge the staff's findings in this regard.

For these reasons, we reject this basis for petitioner's objection to the staff's FONSI and the proposed Director's decision.

5. Colley Issue 5(e): Decommissioning and Decontamination
Budget Cuts Pose Risks to Public Health, Worker Safety
and the Environment

Petitioner asserts that continued plant operation will increase onsite contamination, and that "recent D&D budget cuts" pose major risks. Petitioner concludes that the GDPs should not be allowed to continue to operate without secure financial resources for eventual cleanup.

Section 1403(d) of the Atomic Energy Act of 1954, as amended, provides that the responsibility for the decontamination and decommissioning costs which result from conditions existing before the transition date for the operations of USEC are the

responsibility of DOE. Congress also created a specific fund and funding mechanism to pay these costs in Section 1801 of the Act. Thus the bulk of the decommissioning costs are not the responsibility of USEC and have a mechanism for funding.

With regard to decommissioning costs which stem from USEC's operations, USEC has provided satisfactory financial assurance in compliance with 10 C.F.R. § 76.35(n) and this is discussed in the Compliance Evaluation Reports, Chapter 14.

Therefore we find that the petitioner has not substantiated any basis for concern with this issue. This basis for petitioner's objection to the staff's EA and FONSI is rejected.

6. Colley Issue 5(f): Serious Adverse Health Effects Have Occurred Offsite From Historical and Current Releases

Petitioner alleges that serious offsite health effects may have occurred as a result of Portsmouth plant operations. Petitioner criticizes a study by the Agency for Toxic Substances and Disease Registry (ASTDR) as too narrow in scope, without providing any basis for that criticism. Petitioner refers to an unnamed report by "10 health planning agencies in the state of

Ohio" and says the report found "significant elevated cancer rates in nine contiguous counties in southwest Ohio." Petitioner does not provide any specific information to link these alleged increased cancer rates with plant operations.

In its response to the Colley petition, USEC addressed this allegation by noting that, among other things, the Portsmouth plant is located in Pike County, and Pike County is not among those nine Ohio counties said by petitioner to have higher cancer rates. USEC also notes that the ASTDR study on offsite health effects (which is criticized by petitioner) concludes that "the Portsmouth Gaseous Diffusion Plant and its operations represent no apparent hazard to human health."

We find that the petitioner has not provided a reasonable basis for her assertions. We also note that petitioner fails to link these assertions regarding past occurrences with any aspect of the environmental impacts associated with approval of the compliance plans or the staff's EA or FONSI, and we reject this issue as a basis for petitioner's objection to the staff's FONSI.

7. Colley Issue 5(g): Inaccurate Assessment of Worker Deaths and Offsite Releases

Petitioner asserts that a statement in the staff's Compliance Evaluation Report for the Paducah plant regarding incidents is untrue. The referenced statement is:

... no incidents at any of the GDPs have caused death or serious injuries to any plant personnel from exposure to radioactive materials or radiation nor have there been any incidents that have resulted in off-site release of radiation or radioactive materials that could cause committed doses in excess of established limits.⁹

Petitioner asserts that an unnamed document released in 1961 by Mr. Leo Goodman states that 12 cancer deaths among Portsmouth plant workers were linked with occupational exposure at the plant. Petitioner further alleges that a significant release of hexafluoride gas in the mid-1970's and numerous other incidents were hidden and denied by DOE. Petitioner then asserts that a thorough investigation of environmental releases and cumulative offsite impacts must be conducted before certification takes place.

⁹ Paducah Compliance Evaluation Report, at page 8. The identical statement also appears in the Portsmouth Compliance Evaluation Report.

USEC commented in its response that it was unable to locate a copy of the actual report released by Mr. Goodman, but contends that any confirmed causal relationship between occupational radiation exposure and cancer death resulting in twelve fatalities would be well-known in the scientific literature and referenced in important treatises on the subject. USEC asserts that since this is not the case, even if there were 12 cancer fatalities, it has not been established that there is any cause-and-effect relationship between any worker radiation exposure and subsequent death by cancer.

USEC also points out that the mid-1970's incident that petitioner refers to is documented in its application, in Section 4.2 of the Portsmouth Safety Analysis Report. We note that the same incident, and others, are documented in Section 1.5 of the staff's Certification Evaluation Report (CER) for the Portsmouth plant.

We are satisfied that the issues of onsite and offsite releases have been adequately considered and analyzed in the CERs with respect to compliance with NRC standards. Petitioner has not demonstrated any basis for concluding that the potential impacts of releases have not been adequately assessed.

Therefore we reject this issue as a basis for any objection to the Director's decision or the staff's EA and FONSI with respect to compliance plan approval.

8. Colley Issue 5(h): Horizontal and Vertical Bedrock Fractures are Not Well Understood and Pose Risk as a Migration Pathway

Petitioner refers to a 1990 EPA document, "Environmental, Safety and Health Compliance Assessment of the Portsmouth Gaseous Diffusion Plant." We believe that the correct document is actually a 1990 DOE document by the same title. Petitioner quotes the report as saying that horizontal and vertical bedrock fractures beneath the plant may constitute a contamination migration pathway different from that determined by the monitoring well network, and that this potential pathway has not been completely assessed.

The finding in the 1990 document referred to by petitioner actually relates to a groundwater quality assessment performed by DOE. DOE activities are not part of USEC's operations and are not subject to NRC jurisdiction. Petitioner does not allege that

USEC is engaging in activities which could cause excessive groundwater contamination, and does not present any information to indicate that USEC is violating any NRC requirements related to groundwater contamination. Instead, petitioner challenges the adequacy of DOE's ongoing program to evaluate existing groundwater contamination from other DOE activities at the Portsmouth site.

We find that petitioner has not provided a reasonable basis to object to the Director's decision or the staff's EA or FONSI related to compliance plan approval.

9. Colley Issue 5(i): Connection to Lack of Disposal for High-Level Waste

Petitioner objects to the continued operation of the GDPs because of problems associated with eventual disposal of the plants' output, after use as nuclear fuel, in the form of high-level waste.

The activities at the GDPs do not directly produce high-level radioactive waste and therefore this issue is not appropriate for consideration here. The use of fuel in nuclear

reactors produces high-level waste, but NRC's licensing process for nuclear power plants has taken this issue into consideration. NRC has evaluated the issue of the adequacy of storage and disposal options for high-level radioactive waste and concluded that it has reasonable assurance that disposal is technically feasible and that the waste can be managed and stored in a safe manner until such disposal is available. Rulemaking on the Storage and Disposal of Nuclear Waste, (Waste Confidence Rulemaking), CLI-84-15, 20 NRC 288 (1984); 55 Fed. Reg. 38474 (September 18, 1990).

We find petitioner's issue to be outside the scope of this proceeding and reject it.

C. Colley Issue 6: Objection to Acceptance of DOE Overseeing Nuclear Safety

Petitioner objects to "... acceptance of DOE overseeing nuclear safety currently and during the transition period to slated full privatization of the USEC..."

The petitioner errs in her understanding that DOE will retain regulatory jurisdiction over the GDPs until they are

privatized. In fact, NRC plans to assume regulatory jurisdiction on March 3, 1997, following completion of the initial certification process. This schedule allows for a safe and orderly transition of regulatory authority from DOE to NRC and is unrelated to any privatization which may occur. We note that DOE's current role is as determined by law, not by NRC, and that petitioner's objection is beyond the scope of NRC authority and unrelated to the Director's decision on compliance with NRC standards. Therefore, this issue is rejected.

VII. Analysis and Response to Issues Raised in the Donham/Hanson Petition

The Donham/Hanson petition presents four separate issues, the first three of which are addressed below. The fourth issue is petitioners' request for additional time to file comments on the Director's decision, beyond the 15-day period allowed by 10 C.F.R. § 76.62(c); this request was addressed and rejected in the Commission's previous memorandum and order dated October 18, 1996.

A. Donham/Hanson Issue 1: Analysis of Offsite Radiological Consequences Pursuant to 10 C.F.R. § 76.85 is Inadequate

In Issue 1, petitioners challenge the NRC staff's response to a comment previously made in the petitioners' letter dated December 22, 1995. In that letter, petitioners stated that they believed that "... the cumulative effects of all the past releases in combination with any current or recent releases represents the primary hazard from the operation of the facility," and that consideration of such existing contamination should be required in assessment of the consequences of accidents. In response to this comment, in the Paducah CER, Appendix A, page A-5, the staff replied:

Cumulative effects from past operations are not part of an accident analysis. The primary hazard of this facility is the inadvertent release of UF₆; the pathway of concern is inhalation. Exposure due to accumulation in the environment would be very small.

Petitioners object to this response and assert that 10 C.F.R. § 76.85, "Assessment of accidents," requires relevant past operating history to be included in accident assessments.

Petitioners request that the Commission remand the application and require the staff to fully address the offsite

effects of releases of radioactive materials, including past releases. In support of their request, petitioners state that: (1) there have been significant, regular releases of radioactive material offsite for the entire history of the facility, (2) there is evidence that radioactive substances, particularly plutonium and uranium in deer, are beginning to accumulate in the food chain offsite, and (3) radioactive materials are being released into the environment through groundwater contamination offsite.

The Commission notes that petitioners have not challenged the staff's conclusion that current releases are within regulatory limits but seem to believe that impacts from past operations should be assessed by the NRC and that this assessment is required by 10 C.F.R. § 76.85. The petitioners have misinterpreted the intent of § 76.85.

An analysis of potential accidents and consequences is required by § 76.85, and the analysis should include plant operating history relevant to the assessment. The accident analysis is performed "to establish the basis for limiting conditions for operation of the plant with respect to the potential for releases of radioactive material." Past operating

history must be considered to make sure a potential accident scenario is not overlooked in the analysis. Past accidents are described in the Paducah Safety Analysis Report in § 4.1 and in the staff's Compliance Evaluation Report in § 1.5. Petitioners do not challenge either the adequacy of information concerning past accidents, or the spectrum of accidents considered, either in USEC's application or the staff's CER.

We find that petitioner has provided no basis to contradict the staff's view that any residual contamination from past releases which is present in the environment is at such low levels that it would not be relevant to the analysis of potential impacts of accidents. For the foregoing reasons, this issue is rejected.

B. Donham/Hanson Issue 2: The FONSI is Inadequate

Petitioners challenge the FONSI that the staff prepared and issued in support of approval of the compliance plans. The petitioners assert that since the EA and FONSI were prepared and issued with no notice to the community and no opportunity for public comment, they do not meet the intent of the National

Environmental Policy Act of 1969 (NEPA). The petitioners further assert that NEPA requires a hard look at the cumulative effects from past, present, and future actions, including all of the waste management activities in combination with the operation of the plant and the implementation of the compliance plan.

The Commissions' s regulations governing implementation of NEPA are provided in 10 C.F.R. Part 51. The NRC' s regulations do not require prior notice or opportunity for public comment in connection with the issuance of an EA or FONSI, and petitioner does not claim otherwise. (We note that opportunity for public comment was provided on the compliance plans which are the subject of the EA and that the opportunity to petition for review constitutes another limited opportunity for input from the public.) Therefore, to the extent that petitioners challenge issuance of the EA and FONSI, they challenge the adequacy of NRC' s regulations for implementing NEPA. Such challenges cannot be entertained here.

Petitioner also challenges the EA and FONSI on the basis of inadequate scope, claiming that they should evaluate the cumulative effects of all past, present and future actions, and all waste management activities, in combination with operation of

the plant and implementation of the compliance plan. We disagree. As we discussed above in connection with Colley Issue 5, the staff need only address the environmental impacts associated with compliance plan approval. A broad assessment, such as that claimed by petitioners to be required, would be directly at odds with the categorical exclusion from environmental review in 10 C.F.R. § 51.22(c)(19), which exempts from environmental review the issuance of certificates of compliance under Part 76. Because petitioners' request is at odds with NRC regulations, and because petitioners fail to take issue with any particular aspect of the staff's EA and FONSI related to the impacts of compliance plan approval or implementation, we find that petitioners have failed to substantiate a basis for review of the Director's decision.

C. Donham/Hanson Issue 3: Request for Public Input and/or Notification Regarding Implementation of Compliance Plan Items on Seismic Upgrading

The petitioners request that the Commission establish a mechanism which would allow public input into the implementation of the seismic upgrading described in the compliance plan. This request does not challenge the Director's decision in any respect and is rejected as a basis for requesting review. Mechanisms for public involvement in the certification process and in NRC's regulatory oversight of the GDPs are provided for by the Commission's regulations, as appropriate. In accord with the Commission's Open Meeting Policy, any meetings with USEC to discuss compliance plan items will be noticed and open for the public to attend, except for those at which proprietary or classified information is discussed. Also, as stated in 10 C.F.R. §§ 76.37 and 76.45, opportunities for public comment will be provided for any certification renewal or significant amendment of the certificates.

For the foregoing reasons:

1. The petition for reconsideration dated October 24, 1996, from Diana Salisbury, of Sardinia, Ohio, is denied.¹⁰

2. The petition for reconsideration dated October 25, 1996, from Neilly Buckalew, Director, Kwanitewk NATIVE Resource/Network, of Meriden, New Hampshire, is denied.¹⁰

3. The petition for review dated October 10, 1996, from A. B. Puckett, member, Coalition for Health Concern, of Kevil, Kentucky, is rejected as untimely. However, the substantive matters in the petition are referred to the NRC staff for review and appropriate response. The comments from Jotilley Dortch, dated October 15, 1996, are also referred to the staff for review and appropriate response.

4. The petition for review dated September 30, 1996, from Vina K. Colley, President of P. R. E. S. S., Portsmouth-Piketon Residents for Environmental Safety and Security, of McDermott, Ohio, is denied in its entirety.

¹⁰ The substantive matters in petitioner's petition for review of the Director's decision were previously referred to the staff for appropriate response.

5. The petition dated October 2, 1996, from Mark Donham and Kristi Hanson, of Brookport, Illinois, is denied in its entirety.

Commissioner Dicus did not participate in this matter.

It is so ORDERED.

For the Commission

John C. Hoyle
Secretary of the Commission

Dated at Rockville, MD,
this ___ day of November, 1996.