



NUCLEAR ENERGY INSTITUTE

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February 16, 2012

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Office of Nuclear Material Safety and Safeguards
Mailstop EBB-2B2
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Nuclear Energy Institute comments on U.S. Nuclear Regulatory Commission Draft Report for Comment, *Background and Preliminary Assumptions for an Environmental Impact Statement – Long-Term Waste Confidence Update*, December 2011 (Adams Accession Number ML11340A141)

Project Number: 689

Dear Ms. Pineda:

The Nuclear Energy Institute (NEI),¹ on behalf of the nuclear energy industry, commends the U.S. Nuclear Regulatory Commission (NRC) for proactively addressing the topic of long-term waste confidence as reflected by staff's efforts to seek public comment on the subject draft report. Given current uncertainties in the U.S. repository program, it is appropriate for the NRC staff to supplement the Commission's generic waste confidence finding which concludes "if necessary, spent fuel generated at any reactor can be stored safely and without significant environmental impact for at least 60 years beyond the licensed life for operation."²

The staff's efforts to address these longer timeframes are consistent with the direction received from the Commission³ to "begin a longer-term rulemaking effort" and to prepare an Environmental Impact Statement (EIS) "to support this longer-term waste confidence update." However, we do not

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabricators, nuclear material licensees, and other organizations and individuals involved in the nuclear energy industry.

² 75 *Federal Register* 81032, December 23, 2010.

³ SECY 09-9090, Final Update of the Commission's Waste Confidence Decision, September 15, 2010.

agree with the sequence in which the staff is proposing to conduct its activities as described in the draft report.

More specifically, although we encourage the NRC to continue exploring safe and effective long-term used fuel storage, NEI recommends that the NRC reconsider its current plan to move forward with an Environmental Impact Statement (EIS) in the near term. Rather, the technical evaluation of long-term storage should proceed forward, and should become the basis for a future decision on a proposed action (e.g., a rulemaking revising the current waste confidence rule or findings). This technical evaluation could support, or be structured as, an Environmental Assessment (EA) that would, in turn, inform the NRC's ultimate decision on whether preparation of an EIS is necessary or prudent. This approach is consistent with the Commission's historical approach to waste confidence and offers practical advantages over the current approach.

In order for the proposed action to be properly defined, substantial additional research and development on the technical aspects of extended storage will be required. This research is well underway, under the auspices of the U.S. Department of Energy, the Electric Power Research Institute, and others. These efforts will gather and analyze data, refine our understanding of long-term storage, develop and validate models, and make predictions of long-term storage performance. However, this research will not be completed for a number of years. Until these results are available to guide the NRC's analysis, any EIS will necessarily be highly speculative, of limited value, and potentially in need of substantial future revision. We recommend that, instead of beginning a speculative EIS scoping process now, the NRC undertake a regulatory gap analysis (similar to what is currently underway for the proposed reprocessing rulemaking—10 CFR 7X) to better define this rulemaking.

Additionally, during the time that the NRC is conducting the necessary regulatory and technical analysis, progress may be made on the national policy front with respect to implementing the recommendations of the President's Blue Ribbon Commission on America's Nuclear Future. Deferring final decisions on whether development of a full EIS is appropriate until after these recommendations have been addressed also will facilitate the development of a more well-defined proposed action.

We recognize that the NRC has highlighted, in the assumptions and scenarios described in the draft report, a number of issues that will need to be addressed in considering storage of used nuclear fuel over long timeframes. In anticipation that the NRC will more appropriately address these same issues in forthcoming technical and regulatory analysis, we are offering a number of specific comments on the draft report in Attachment 2 to this letter. Many of these comments highlight areas that could be addressed in a regulatory gap analysis. Attachment 3 to this letter provides a more detailed explanation of one of our specific comments—that the draft report's Assumption 9, "The Waste Confidence EIS will consider the impacts of terrorism," unnecessarily departs from Commission precedent.

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Finally, we understand that the NRC has also received comments from the Decommissioning Plant Coalition (DPC).⁴ We recognize and respect that the DPC has a position that differs somewhat from that of the industry as a whole—in that they have no interest in extended waste confidence to support the licensing of new and operating nuclear plants given that they are already no longer operating. However, both NEI and the DPC are united in the view that work on the proposed EIS should be deferred. Placing the EIS on hold will allow the NRC to conduct sufficient technical and regulatory analysis to not only better define the proposed action, but also to consider the full range of actions necessary to address the differing needs of operating and shutdown plants.

In summary, while we believe that significant restructuring of the NRC's efforts to address long-term waste confidence is needed, we greatly appreciate that staff is being proactive in undertaking these efforts. We look forward to continuing to work with staff on this effort. We would be pleased to meet with the NRC staff at your earliest convenience to further discuss our comments on the draft report.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Rodney McCullum

Attachments

c: Ms. Catherine Haney, NMSS, NRC
Mr. Aby S. Mohseni, NMSS/SFAS, NRC

⁴ Letter, Callahan to Pineda, February 16, 2012.