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US Nuclear Regulatory Commission (NRC)  
Washington DC 20555-0001

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Comment Submission Email: [VLLWTransferComments.Resource@nrc.gov](mailto:VLLWTransferComments.Resource@nrc.gov)  
[www.regulations.gov](http://www.regulations.gov)

SUBJECT: 92 Organizations' Comments on NRC's proposed "interpretive" rulemaking,  
"Transfer of VLLW Nuclear Waste to Exempt Persons for Disposal,"  
Docket ID NRC-2020-0065--Call for Rescission and Cancellation

Dear Ms. Doell, Dr. Holahan and VLLW Docket 2020-0065:

The 92 national, regional, state and local organizations listed ("Commenters") hereby call upon the Nuclear Regulatory Commission (NRC) to rescind and cancel the proposed rulemaking entitled "Transfer of VLLW Waste to Exempt Persons for Disposal" found at the Regulations.Gov website<sup>1</sup> as Docket ID NRC-2020-0065, 3-6-2020 ("Proposed Rule").

The NRC proposes, by way of supposed reinterpretation, to reverse longstanding requirements that require licensed control over radioactive wastes and materials generated by a licensed nuclear facility. The NRC seeks to abandon its regulatory authority over the destination and disposition of untold quantities of variably radioactive waste. The NRC's reinterpretation would authorize any of the 2,600 municipal and private sanitary and industrial landfills and hazardous waste sites in the United States<sup>2</sup> to seek an "exemption" to receive and dispose of radioactive waste. The proposed new "exemption" procedure is actually a permit for unregulated disposition of licensed radioactive material and waste by another name. The process of granting "exemptions" or *de facto* permits will not be carried out publicly, transparently, democratically or adversarially and will spur creation of an entirely new class of radioactive waste disposal and processing sites. The site-specific radiation emission limitations data and extrapolations from modeling will be nonpublic, proprietary secrets. Even if local governments or members of the public discover that a local landfill or waste site is accepting radioactive waste, they will have no notice or right to know how radioactive that material may be, how much has been received, treated or disposed, nor will they have any say in whether or how effectively it is being physically contained over time.

By this "reinterpretation," the NRC would misleadingly rename an undefined and potentially huge share of nuclear power waste, as "Very Low-Level Waste" (VLLW), and

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<sup>1</sup> <https://www.regulations.gov/document?D=NRC-2020-0065-0001> ("Proposed Rule").

<sup>2</sup> <https://www.epa.gov/lmop/project-and-landfill-data-state>

release it from regulatory control and documentation. The term “very low-level waste” is not defined in the Atomic Energy Act<sup>3</sup> or in regulations and is being deceptively invoked to minimize public concern while this dramatic deregulation of potentially all “low-level” radioactive waste takes place. With this change, unlicensed entities, including but not limited to sanitary landfill and hazardous landfill operators, could easily become “specific exempt” radioactive waste dumpers or dispersers. The NRC aspires to have its dangerous new interpretation apply only to landfills but is not mandating it. The proposed 25 millirem/year dose limitation on “specific exempt” entities to receive radioactive waste is an invitation for “specific exempt” facilities to spring up in semi-secrecy to dispose of nearly all of the so-called "low-level" radioactive waste in the U.S., and low and intermediate level waste from abroad. “Very Low-Level Waste” is a concocted term for what could include all commercial nuclear waste except irradiated fuel, an amalgam of many different objects and materials that are currently licensed radioactive waste and materials including resins, filters, equipment, components, metal, soil, wood, plastic, concrete, demolition debris and more that are or have become radioactive as a result of nuclear fuel chain industrial processes.

The NRC is peddling its proposal as an “interpretative” rule and a “voluntary relaxation” of its legislative regulations.<sup>4</sup> The spectre of adding unknown numbers of landfills and waste sites to the known facilities for nuclear waste disposal, coupled with the exemption of these new players from any continuing regulatory oversight by the NRC, creates the potential for many new and invisible threats to public health and the environment and raises questions about liability, licensing and overall responsibility.

## I. Background

VLLW comprises a reincarnation and expansion of recurring campaigns, beginning with the former Atomic Energy Commission down through the present hegemony of the Nuclear Regulatory Commission and the U.S. Department of Energy, to de-control less-concentrated radioactive waste from the nuclear power and weapons fuel chains. These efforts began about 1962 and have persisted to the present, each time confronted by concerned organizations, individuals, church-women, health professionals, workers, unions, the steel industry, local and state governments, and many others. Over the decades, the proponents of these deregulation drives have come up with many euphemisms to describe and justify releasing untold amounts of man-made radioactivity into sectors where people would be placed at risk. The below list of euphemisms<sup>5</sup> is non-exhaustive but depicts how nuclear waste promoters have tried to divert public attention and understanding from the actual stakes:

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<sup>3</sup>The NRC admits in the Proposed Rule “IV. Discussion” section: “The term VLLW is not defined by statute or in the NRC’s regulations.”

<sup>4</sup>Proposed Rule at “VI. Backfitting:” “The proposed interpretive rule is a non-mandatory, voluntary relaxation.”

<sup>5</sup> Source: D’Arrigo, D. and Olson, M., Out of Control—On Purpose: DOE’s Dispersal of Radioactive Waste into Landfills and Consumer Products, p. 27 (Nuclear Information and Resource Service, Takoma Park, MD 2007).

Alternative methods of disposal (10 C.F.R. § 20.2002)  
BRC, Below Regulatory Concern  
Beneath Regulatory Control  
Beneficial Reuse  
Clean  
Clearance, Clear  
*De minimus* or *de minimis* (such minimal radiation that it is not worth considering)  
Deregulation  
Dose-Based Standards  
Exempt, Exemptions  
Exempt from regulatory control  
Excluded from regulation (International Atomic Energy Agency term for naturally-occurring radioactivity)  
Health-based Standard  
Indistinguishable from Background  
Free Release  
Law of Concentrated Benefit over Diffuse Injury  
Linguistic Detoxification  
Low Activity Radioactive Waste  
Low Activity Waste  
Non-detect  
Non-regulatory approach to management of radioactive waste (U.S. EPA)  
Not Amenable to Control  
Not Radioactive  
Not Relevant to Radiation Protection Dispositions  
Optimization (cost benefit analysis carried out by waste generator)  
Reclassification  
Recycling  
Release  
Restricted Release  
Restricted Reuse (usually over 1st reuse only)  
Risk-Based Standard  
Risk-informing or Risk-informed (analysis carried out by generator)  
Slightly Radioactive Scrap Metal or Material (SRSM)  
Slightly Radioactive Waste  
Special Waste  
Trivial (risk, dose, contamination)  
Very Low Level Radioactive Waste (VLLW)  
*And for 2020, add*  
"Specific Exempt" as proposed by NRC 3-6-2020  
PCW Potentially Clean or Potentially Contaminated Waste

## **II. The Proposal Is Not An ‘Interpretive Rule;’ It Is A Legislative Rulemaking**

There are considerable flaws with the proposal. For one, it is not, in reality, an “interpretive rule,” but is, instead, a legislative rule or regulation that must be considered

according to the requirements of the Administrative Procedure Act. The NRC admits that the “NRC’s guidance on § 20.2001 states that the transfer of material to exempt persons is not an authorized method of disposal. . . .”<sup>6</sup> Consistent with that, the legislative regulation 10 C.F.R. § 20.2001(a) requires that “A *licensee* shall” dispose of licensed material only (1) By transfer to an *authorized recipient* as provided in § 20.2006 or in the regulations in parts 30, 40, 60, 61, 63, 70, and 72 of this chapter; . . .” According to § 20.2006(b), at present the only “authorized recipient” is “[a]ny licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility.” Additionally, § 20.2001(b) indisputably requires that “A person must be specifically licensed to receive waste containing licensed material from other persons for . . . (4) Disposal at a land disposal facility licensed under part 61 of this chapter. . . .” That provision in current regulations clearly limits the range of “authorized recipients” to persons with nuclear licenses who are NOT exempt (*i.e.*, licensed) persons. Solid and hazardous “disposal facility operators” do not have nuclear licenses--they are not licensed (non-exempt).

NRC’s proposed reinterpretation would change the guidance for the Section 20.2001 regulations to the opposite of its current meaning. To make things even more complicated and confusing this reversal of position is voluntary.

The new interpretation would transform some solid and hazardous waste facility operators into a class of *un*licensed entities -- “specifically exempted” -- who would thus be granted permission by the NRC to dispose of radioactive waste. The NRC apparently does not intend to limit the number of new “specific exempt” radioactive waste disposal sites that would be created by its proposed reinterpretation, but allowing such a broad deregulatory “exemption” would mock the rules and guidance limiting the invocation of exemptions in the NRC regulatory framework. The potential cumulative effects of this new interpretation would surely be large new burdens upon the environment and public health that must be considered under NEPA (see below). The ruse of a new interpretation would eviscerate 10 C.F.R. Part 61 without rescinding it. The effects of the new interpretation are legislative, but are being peddled as “interpretive.” By calling the change “interpretive,” the NRC attempts to evade court challenges.

#### **A. The NRC’s Proposed Reinterpretation Provides No Explanation Or Justification For the Change**

By introducing a breathtaking new interpretation of a longstanding regulation, the NRC will beget more corporate welfare for nuclear materials licensees, *i.e.*, avoidance of the higher expenses of waste treatment and containment and disposal in NRC-licensed waste facilities. To justify this, the NRC mentions only a vague need to “exempt” persons conducting landfilling activities. Consequently, the NRC has changed its policy but has not “provide[d] a reasoned explanation for the change.” *Jimenez-Cedillo v. Sessions*, 885 F.3d 292, 298 (4th Cir. 2018) (quoting *Encino Motorcars, LLC v. Navarro*, 136 S.Ct. 2117, 2125, 195 L.Ed.2d 382 (2016)). “At a minimum, an agency must ‘display awareness that it is changing position and show that there are good reasons for the new policy.’” *Id.* (quoting *Encino Motorcars*, 136 S.Ct. at 2126).

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<sup>6</sup> <https://www.nrc.gov/waste/llw-disposal/transfer-vllw.html>

By providing essentially no rationale for this change, other than supposedly to create more “voluntary” alternatives for waste disposal, the NRC tries to project its proposal as nominal. The NRC does not address the “facts and circumstances that underlay or were engendered by the prior policy,” including any “serious reliance interests.” *Encino Motorcars*, 136 S.Ct. at 2126 (quoting *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16, 129 S.Ct. 1800, 173 L.Ed.2d 738 (2009)). By not explicating the depth and breadth of the pre-existing interpretation, the public has little means of seeing the sharp contrasts and inconsistencies between the new proposal and the old one. “An ‘unexplained inconsistency’ in agency policy indicates that the agency’s action is arbitrary and capricious, and therefore unlawful.” *Jimenez-Cedillo*, 885 F.3d at 298 (quoting *Encino Motorcars*, 136 S.Ct. at 2125); *Casa De Maryland v. U.S. Department of Homeland Security*, 924 F.3d 684, 704-705 (4th Cir. 2019).

In sum, this is not a mere “interpretive rulemaking,” although the NRC has contrived to make it appear to be. There is no legally satisfactory justification for the change that would enable it to be seen as a simple clarification of pre-existing policy. It is more than that.

### **B. The Proposed Interpretive Change Masks An Improper Legislative Rulemaking That Violates The Administrative Procedure Act**

As mentioned, the NRC describes its proposed interpretive rule as “a non-mandatory, voluntary relaxation.” But allowing exempt persons to become waste disposal site operators would require a legislative rulemaking accompanied by the agency’s provision of explanation and justification for the changes, as prescribed by the Administrative Procedure Act (APA), 5 U.S.C. § 553.<sup>7</sup>

The NRC is calling its proposal an “interpretive rule” as a subterfuge. With an interpretive (also called interpretative) rule, use of the notice-and-comment process required by the APA for legislative rules is merely gratuitous and the change is immune from court attack. New interpretations are not bound to follow the notice-and-comment process of the APA because they are, after all, simply reinterpretations that are not supposed to change the substance of the rules. *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 135 S.Ct. 1199, syll. (2015). The NRC’s solicitation of comment here, if this were truly an “interpretive rule” would not be challengeable in court.

But the proposal is not merely procedural; it represents a major, substantive change of direction, namely, to allow the use of unlicensed radiological waste dumps. A truly procedural rule “covers agency actions that do not themselves alter the rights or interests of parties, although it may alter the manner in which the parties present themselves or their viewpoints to the agency.” *James V. Hurson Associates, Inc. v. Glickman*, 229 F.3d 277, 280, 343 U.S. App. D.C. 313 (D.C. Cir. 2000) (internal quotation marks omitted). The agency action proposed here alters substantial rights and interests and creates a significant new class of parties (albeit calling them

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<sup>7</sup>According to 5 U.S.C. § 553(a)(3)(a), “Except when notice or hearing is required by statute, this subsection does not apply— (A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice. . . .”

“exempt” entities) that just happen to be accorded the same, or indeed, superior, rights to those of NRC licensees.

An interpretative rule is limited to explaining ambiguous language, or reminding parties of existing duties; it is not a mechanism to create new law. *See Citizens to Save Spencer County v. EPA*, 600 F.2d 844, 876 n. 153 (D.C. Cir. 1979). An agency may not, under the interpretative rule exception, “constructively rewrite [a] regulation” or “effect a totally different result.” *National Family Planning and Reprod. Health Ass'n, Inc. v. Sullivan*, 979 F.2d 227, 236 (D.C. Cir. 1992). *Id.*, *Sentara-Hampton Gen. Hosp. v. Sullivan*, 980 F.2d 749, 759 (D.C. Cir. 1992). An interpretative rule may not be used to substantively change existing rights and duties. *Fertilizer Institute v. E.P.A.*, 935 F.2d 1303, 1308 (D.C. Cir. 1991); *General Motors v. Ruckelshaus*, 742 F.2d 1561, 1565 (D.C. Cir. 1984), *cert. denied*, 471 U.S. 1074, 105 S.Ct. 2153, 85 L.Ed.2d 509 (1985).

The NRC’s characterization of this dramatic change as an “interpretive rulemaking” is incorrect, misleading, and it cannot stand. The effect of the proposal would be extensive changes in the nature, type and number of participants in the radioactive waste disposal industry.

### **C. The Proposal Violates The Atomic Energy Act**

The proposal violates the Atomic Energy Act (AEA) by not defining the radioactive waste to be disposed of while simultaneously releasing it from radioactive regulatory control. This is not the purpose of the power accorded the NRC to create exemptions under the AEA. The proposal would allow radioactive waste to be sent to entities that will not be regulating radioactivity or radiation exposure levels. Landfill operators would be left by the NRC to intuit -- or contrive to show -- how the aggregate dose from waste deliveries will not exceed 25 millirems per year.

The NRC is authorized by the AEA, at 42 U.S.C. § 2077(d):

[T]o establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license . . . when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute unreasonable risk to the health and safety of the public.

So while the AEA conceives of exempting “classes or quantities,” and “kinds of . . . users,” the law does not contemplate customizing waste disposal standards and then exempting the landfill or waste site operator from all accountability to enforce those standards. That is not an AEA “exemption.” Also, the published notice of the new interpretation does not contain the findings mentioned in the statute.

The AEA does not define VLLW. Surprisingly, the NRC interpretation would define the waste by who disposes of it! “Specific exempt” – *i.e.*, *unregulated* – recipients and disposers

where the NRC has arbitrarily set a dose limit without regard to whether it constitutes an “unreasonable risk to the health and safety of the public.” This reinterpretation does not create “kinds of users;” it creates a class of “specific exempt” recipients. Section 2077(d) does not allow special nuclear material to be disposed of under the AEA as the NRC envisions.

Respecting byproduct material, the AEA uses essentially identical language as to exemptions. 42 U.S.C. § 2111(a) requires “classes or quantities” of byproduct material, and contains the same “kinds of . . . users” language.<sup>8</sup> Hence byproduct material may not be disposed of by “specific exempt” entities, either.

In sum, the NRC has contorted the exemption power under the AEA -- which is reserved to address nonrecurring situations -- into a massive expansion of unregulated radioactive waste disposal. VLLW is not an “interpretive” rule; *it is legislative* because it “supplements a statute, adopts a new position inconsistent with existing regulations, or otherwise effects a substantive change in existing law or policy.” *Children’s Hosp. of the King’s Daughters, Inc. v. Azar*, 896 F.3d 615, 620 (4th Cir. 2018). The NRC’s re-interpretation “conflict[s] with the plain meaning of the wording used in [existing] regulation[s],” and the existing legislative regulations in the end “of course must prevail.” *See Long Island Lighting Co. (Shoreham Nuclear Station, Unit 1)*, ALAB-900, 28 NRC 275, 288-90 (1988), *review declined*, CLI-88-11, 28 NRC 603 (1988).

The NRC’s reinterpretation contradicts the Atomic Energy Act and fails for that reason.

#### **D. The Rulemaking Proposal Is A ‘Major Federal Action’ That Requires An Environmental Impact Statement**

The NRC’s proposal will authorize the dramatic redirection of hundreds of thousands of tons of irradiated, activated and otherwise radioactively contaminated nuclear materials and waste to an unknown number of the nation’s 2,600 landfills, including hazardous waste (“Title C”) landfills and possibly to new sites formed to take radioactive waste without the burden of getting a 10 CFR 61 or comparable Agreement State license. The cost of radioactive waste disposal will likely drop significantly as a result of new disposers. Why go through the time and expense of characterizing every load of waste and spending more to dispose of licensed “low-level” radioactive waste in a licensed facility, if a proprietarily-protected pledge to limit doses to less than 25 millirems/year is all that is required? The NRC’s mere intention that the waste go to landfills does not guarantee that radioactive waste will end up in landfills; it could end up in unlined, “specific exempt” pits or other destinations. Even licensed sanitary landfills are categorically unequipped to contain irradiated wastes that will leach isotopic material for hundreds or thousands of years.

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<sup>8</sup> “The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.”

The potential for an unknown number of new radioactive waste disposal destinations with a “specific, exempt” designation attainable on the cheap in permitting terms ominously portends a “major federal action” within the meaning of National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.* that requires serious and public analysis. NEPA requires the NRC to examine and report on the environmental consequences of its anticipated grants of open-ended “exemptions.”

An agency must compile an Environmental Impact Statement (EIS) before taking a “major Federal action[ ] significantly affecting the quality of the human environment.” 42 U.S.C. § 4332(2)( C). *See Sierra Club v. Dep't of Transp.*, 753 F.2d 120, 127 (D.C. Cir. 1985); *see also Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 503-04 (D.C. Cir. 2010) (explaining NEPA procedures in detail). A formal NRC rulemaking constitutes a “major federal action” even where its promulgation would cause “[i]ndirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” *New York v. Nuclear Regulatory Comm'n*, 589 F.3d 551, 553 (2d Cir. 2009) (discussing NRC’s “waste confidence decision” rule (WCD) and citing 40 C.F.R. §§ 1508.8, 1508.18).

The NRC’s reinterpretation of its regulations will open the prospects for creation of thousands or millions of cubic yards of new disposal space in geographically, climatologically, topographically and geologically dispersed locations. The reinterpretation would institute a generic permitting regime using one-time radioactive waste characterization and superficial site assessment inquiry. Radioactive waste deliveries will not be recorded on manifests in this huge new market niche. Documentation of its receipt at disposal sites would be at best subjected to the vagaries of record keeping at hundreds of different landfills. The NRC would conduct zero periodic review or environmental auditing. The release of liability consequences for landfill operators inherent in an “exemption” means there will be incentives not to create or maintain records of the arrival, nature and radiotoxicity of material being dumped. The NRC’s proposal assures that the bulk of scientific data that might have informed regulators and the public of serious threats to the environment and public health will be concealed and unlikely even to be generated at all.

There is a stupendous irony raised by the proposal itself, which alone justifies NEPA scrutiny: the 25 millirem/year effective dose equivalent (“EDE”) calculation could allow *more* radioactive waste to go to and be released from exempt landfills than licensed 10 C.F.R. Part 61 facilities. At least two of the existing 10 C.F.R. Part 61-licensed facilities are limited to 25/75/25 millirems/year (not "EDE"), which according to the U.S. Environmental Protection Agency is approximately equal to 10 mllirems/yr EDE. Consequently, new, exempt sites could accept at least 2.5 times as much radioactivity as licensed, regulated ones are permitted. This is additional evidence of a significant change in the substance of radioactive waste regulation.

Because of the potentially significant impacts of both this reinterpretation across the country and the potentially significant impacts at each “specific exempt” site, NEPA requires either a programmatic or generic Environmental Impact Statement (PEIS or GEIS) on the rule change, and site specific EIS’s at each site that applies. A PEIS is a tiered document. NEPA’s CEQ implementing regulations recognize that in addition to site-specific projects, the types of “major Federal action” subject to NEPA analysis requirements include “Adoption of formal



plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based . . . and adoption of programs, such as a group of concerted actions to implement a specific policy or plan; [and] systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.” 40 C.F.R. § 1508.18(b)(2)-(3), which provides the conceptual underpinning for the use of PEIS’s. See also 10 C.F.R. § 1502.4(b)(“Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs . . . Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decision making”).

A PEIS “provides an occasion for a more exhaustive consideration of effects and alternatives than would be practicable in a statement on an individual action. It ensures consideration of cumulative impacts that might be slighted in a case-by-case analysis. And it avoids duplicative reconsideration of basic policy questions.” CEQ Memorandum to Federal Agencies on Procedures for Environmental Impact Statements. 2 ELR 46162 (May 16, 1972).

The Supreme Court has recognized the need for national programmatic environmental analysis under NEPA where a program “is a coherent plan of national scope, and its adoption surely has significant environmental consequences.” *Kleppe v. Sierra Club*, 427 U.S. 390, 400 (1976). Programmatic direction can often help “determine the scope of future site-specific proposals.” *Laub v. U.S. Dep’t of Interior*, 342 F.3d 1080, 1089 (9th Cir. 2003). CEQ regulations define this practice as “tiering.” 40 C.F.R. § 1502.20 (“Whenever a broad environmental impact statement has been prepared . . . and a subsequent statement or environmental assessment is then prepared on an action included within the . . . program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action”).

Tiering allows an agency to meet its NEPA obligations in steps: First, the agency publishes a PEIS assessing the entire scope of a coordinated federal program. See *Nevada v. Dep’t of Energy*, 457 F.3d 78, 91 (D.C. Cir. 2006). The PEIS ensures that the agency assesses “the broad environmental consequences attendant upon a wide-ranging federal program.” *Id.* at 92. The agency later supplements that programmatic analysis with narrower EISs analyzing the incremental impacts of each specific action taken as part of a program. *Id.* at 91. A PEIS would examine the entire NRC policy initiative rather than performing a piecemeal analysis within the structure of a single agency action. *Ass’n of Pub. Agency Customers v. Bonneville Power Administration*, 126 F.3d 1158, 1184 (9th Cir.1997).

Agencies such as the NRC must “take a ‘hard look’ at their proposed actions’ environmental consequences in advance of deciding whether and how to proceed.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 803 F.3d 31, 37 (D.C. Cir. 2015). There is zero evidence in the proposed rulemaking papers that any such inquiry has been performed. The NRC has an obligation to do so, irrespective of whether its proposal is an “interpretive regulation” revision or a legislative rulemaking. “Compliance with NEPA is a primary duty of every federal agency;

fulfillment of this vital responsibility should not depend on the vigilance and limited resources of environmental plaintiffs.” *Friends of the Clearwater v. Dombeck*, 222 F.3d 552, 558-59 (9th Cir. 2000) (quoting *City of Davis v. Coleman*, 521 F.2d 661, 667 (9th Cir. 1975)). The NRC is required to apply a “rule of reason” to the decision whether or not to prepare an EIS. *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 373-74 (1989). A NEPA document must be compiled to encompass this very controversial change.

### **E. Conclusion**

The NRC is pushing a disguised legislative rulemaking; it must be acknowledged and publicly noticed as such and the Administrative Procedure Act’s procedural requirements must be strictly followed. The Atomic Energy Act limitations on creation of exemptions must be respected, and that means that the proposal is not “interpretive,” but is legislative. A NEPA document must be created as a prerequisite to any consideration of this proposal.

The NRC has tried repeatedly for decades to deregulate radioactive garbage to allow it to be disposed of as if not radioactive, or to hide or dilute contaminated wastes in commercially recycled metal, concrete, soil, plastic, asphalt and other streams to make consumer products and building supplies. The present NRC word game would shift even more radioactive wastes and liability from the nuclear power industry onto the public by releasing the wastes from regulatory control. The undersigned organizations oppose this gambit and demand that it be abandoned.

Thank you very much.

/s/ Terry J. Lodge

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 and on behalf of all below Commentors

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| Public Citizen                           | Tyson Slocum                      | Washington                       | DC |
| Beyond Nuclear                           | Kevin Kamps                       | Takoma Park                      | MD |
| Food and Water Action                    | Mitch Jones                       | Washington                       | DC |
| Physicians for Social Responsibility     | Jeff Carter                       | Washington                       | DC |
| Military Toxics Project                  | Doris Bradshaw                    | Memphis                          | TN |
| Environmental Justice Initiative         | Joel Kupferman, Esq.              | NY                               | NY |
| National Lawyers Guild-EJ Committee      | John Coon, Esq.                   | Brunswick                        | ME |
| California Communities Against Toxics    | Jane Williams                     | Redmond                          | CA |
| Ecological Options Network, EON          | Mary Beth Brangan                 | Bolinas                          | CA |
| Mothers for Peace SLO                    | Molly Johnson                     | San Luis Obispo                  | CA |
| SolarTopia.org                           | Harvey Wasserman                  | Los Angeles                      | CA |
| CO Citizens Against Toxic Waste, Inc.    | Sharyn Cunningham                 | Canon City                       | CO |

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|--|------------------------|---------------------|----|
| INFORM-Information Network for Responsible Mining                | Jennifer Thurston      | Norwood             | CO |
| Physicians for Social Responsibility, CO                         | Cory Carroll           | Fort Collins        | CO |
| Rocky Mountain Peace and Justice Center                          | Judith Mohling         | Boulder             | CO |
| Connecticut Opposed to Waste Nuclear Watch South                 | Peg Ryglisn            | Broad Brook         | CT |
| GA Women's Action for New Directions                             | Joanne Steele          | Sautee-Nacoochee    | GA |
| Green State Solutions  | Dianne Valentin        | Atlanta             | GA |
| Snake River Alliance   | Mike Carberry          | Iowa City           | IA |
| Nuclear Energy Information Service                               | Holly Harris, JD       | Boise               | ID |
| Eco-Justice Collaborative  | Dave Kraft             | Chicago             | IL |
| Physicians for Social Responsibility Chicago                     | Pamela J. Richart      | Champaign           | IL |
| Vista 360  | Sarah Lovinger, MD     | Evanston            | IL |
| League of Women Voters of Illinois                               | Tom Rielly             | Libertyville        | IL |
| Stand Up/Save Lives Campaign                                     | William Koehl          | Geneva              | IL |
| Cape Downwinders   | Maureen Headington     | Burr Ridge          | IL |
| Citizen Action Network   | Diane Turco, M.Ed      | Harwich             | MA |
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| Great Lakes Environmental Alliance                               | Bill Linnell           | Portland            | ME |
| Women's International League for Peace & Freedom, Detroit Branch | Tanya Keefe            | Port Huron          | MI |
| Maurice & Jane Sugar Law Center for Economic and Social Justice  | Laura Dewey            | Grosse Pointe Woods | MI |
| Coalition for a Nuclear Free Great Lakes                         | John C Philo           | Detroit             | MI |
| Don't Waste Michigan   | Michael J. Keegan      | Monroe              | MI |
| Citizens' Resistance at Fermi 1                                  | Alice Hirt             | Holland             | MI |
| Citizens for Alternatives to Chemical Contamination              | Jessie Pauline Collins | Redford             | MI |
| North American Water Office                                      | Chance Hunt            | Lake Station        | MI |
| WNC Physicians for Social Responsibility                         | Lea Foushee            | Lake Elmo           | MN |
| Gender Impact Radiation Project                                  | Lewis Patrie, MD       | Asheville           | NC |
| Occupy Bergen County   | Mary Olson             | Asheville           | NC |
| Concerned Citizens for Nuclear Safety                            | Sally Jane Gellert     | Bergen County       | NJ |
| Nuclear Issues Studies Group                                     | Joni Arends, JD        | Santa Fe            | NM |
| Nevada Nuclear Waste Task Force                                  | Leona Morgan           | Albuquerque         | NM |
| LEAF of Hudson Valley  | Judy Treichel          | Las Vegas           | NV |
| Western New York Drilling Defense                                | Susan HitoShapiro, JD  | Nanuet              | NY |
| Sierra Club Atlantic Chapter                                     | Charley Bowman         | Buffalo             | NY |
| Hudson Valley Green Party  | Kathryn E. Bartholomew | Montour Falls       | NY |
| Hudson River Sloop Clearwater, Inc.                              | Barbara Kidney, Ph.D.  | Town of Shawangunk  | NY |
| Shut Down Indian Point Now                                       | Manna Jo Greene        | Beacon              | NY |
| Nuclear Age Peace Foundation                                     | Catherine Skopic       | NYC                 | NY |
| New York Solar Energy Society                                    | Alice Slater           | New York            | NY |
| Consumers Health Freedom Coalition                               | Wyldon King Fishman    | Bronx               | NY |
| Chicago Area Peace Action  | Arnold Gore            | Brooklyn            | NY |
|  | M. Catherine Buntin,   | Wilmette            | IL |

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|  | MPH, MS, RN                              |                 |    |
| NYEJP  | Samuel Muslin, MM, JD,                   | New York        | NY |
| Organize for Action WNY                                  | Jane Marinsky                            | Buffalo         | NY |
| United 4 Clean Energy                                    | Marie Inserra, NP                        | Peekskill       | NY |
| NYCD16 Indivisible                                       | Natalie Polvere                          | Yonkers         | NY |
| Council on Intelligent Energy & Conservation Policy      | Michel Lee, JD                           | Scarsdale       | NY |
| Grassroots Environmental Education                       | Patti Wood                               | Port Washington | NY |
| Stop the Algonquin Pipeline Expansion                    | Suzannah Glidden                         | North Salem     | NY |
| Sisters of Mercy   | Margaret Quinlan, RSM                    | Buffalo         | NY |
| RadioactiveWasteAlert.org                                | Carolyn Harding                          | Bexley          | OH |
| Columbus Community Bill Of Rights                        | William Lyons                            | Columbus        | OH |
| SPAN Ohio Columbus Region                                | Robert Krasen                            | Columbus        | OH |
| Toledo Safe Energy Coalition                             | Mike Ferner                              | Toledo          | OH |
| Columbus Community Rights Coalition                      | Sandy Bolzenius, Ph.D.                   | Columbus        | OH |
| Ohio Green Party   | Joe DeMar                                | Columbus        | OH |
| Oregon Physicians for Social Responsibility              | Damon Motz-Storey                        | Portland        | OR |
| Citizen Power, Inc.                                      | David Hughes                             | Pittsburgh      | PA |
| Three Mile Island Alert                                  | Eric Epstein                             | Harrisburg      | PA |
| Hilton Head for Peace                                    | Dr. F Taylor, Ph.D.                      | Hilton Head     | SC |
| Fairewinds Energy Education                              | Maggie Gundersen                         | Charleston      | SC |
| Black Hills Clean Water Alliance                         | Lilias Jarding                           | Rapid City      | SD |
| Defense Depot Memphis TN                                 | Doris Bradshaw                           | Memphis         | TN |
| Concerned Citizens' Committee                            |  |                 |    |
| Tennessee Environmental Council                          | Don Safer                                | Nashville       | TN |
| Youth Terminating Pollution                              | Isis Boheman                             | Memphis         | TN |
| Public Citizen Texas                                     | Adrian Shelley                           | Austin          | TX |
| Green Sanctuary Ministry                                 | Beki & Richard Halpin                    | Austin          | TX |
| Irving Impact  | Cathy Wallace                            | Irving          | TX |
| Sustainable Energy & Economic Development SEED Coalition | Karen Hadden                             | Austin          | TX |
| Peace Farm   | Lon Burnam                               | Fort Worth      | TX |
| Dallas Peace and Justice Center                          | Nuclear Free World Cmte                  | Dallas          | TX |
| Sierra Club, Lone Star Alamo Group                       | Dr. Terry Burns, MD                      | San Antonio     | TX |
| Healthy Environment Alliance HEAL Utah                   | Scott Williams, MD                       | Salt Lake City  | UT |
| Utah Physicians for a Healthy Environment                | Jonny Vasic                              | Salt Lake City  | UT |
| New England Coalition on Nuclear Pollution               | Clay Turnbull                            | Brattleboro     | VT |
| Vermont Yankee Decommissioning Alliance                  | Debra Stoleroff                          | Montpelier      | VT |
| Tacoma Jewish Voice for Peace                            | Nancy Farrell                            | Tacoma          | WA |
| Heart of America Northwest                               | Gerald Pollett, JD, State Representative | Seattle         | WA |
| Nukewatch  | John LaForge                             | Luck            | WI |