

November 8, 2012

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U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

SUBJECT: *Notice of Intent to Prepare Waste Confidence EIS*

Dear Commissioners:

On behalf of twenty five organizations and individuals who seek a meaningful opportunity to participate in the environmental review process the NRC has initiated in response to the U.S. Court of Appeals' decision in *State of New York v. NRC*, 681 F.3d 471 (D.C. Cir. 2012)¹, we write to request you withdraw the "Request for comments on the notice of intent to prepare and (sic) environmental impact statement and notice of public meetings" ("Notice"), published in the Federal Register on October 25, 2012 (77 Fed. Reg. 65,137). The Notice should be withdrawn because it fails to satisfy two of the most basic requirements of U.S. Nuclear Regulatory Commission ("NRC") regulations for notices of intent to publish an environmental impact statement ("EIS"). As a result, the notice fails to give the public sufficient information on which to develop comments on the appropriate scope of the EIS proposed by the NRC.

According to the Notice, the purpose of the proposed EIS is to respond to the U.S. Court of Appeals' decision in *State of New York*. To that end, the Notice briefly describes the types of environmental impacts that it proposes to evaluate. The Notice fails, however, to provide two pieces of information required by NRC regulation 10 CFR § 51.27(a)(2) for a Notice of Intent to prepare an EIS: (a) a "description of the proposed action" and (b) "to the extent sufficient information is available, possible alternatives." Instead, the NRC asserts that the scoping process will be used, among other things, to "[d]efine the proposed action that is to be the subject of the EIS." 77 Fed. Reg. at 65,138. Under section 51.27(a)(2), however, it is the NRC's responsibility in the first instance to identify the proposed action in the scoping notice. Otherwise, commenters on the scoping notice will have no basis for commenting on the scope of alternatives to the proposed action or the impacts of the proposed action that must be considered.

¹ These organizations and individuals are: Beyond Nuclear, Blue Ridge Environmental Defense League, Center for a Sustainable Coast, Citizens Allied for Safe Energy, the Ecology Party of Florida, Friends of the Coast, Friends of the Earth, Georgia Women's Action for New Directions, Hudson River Sloop Clearwater, Institute for Energy and Environmental Research, Dan Kipnis, Missouri Coalition for the Environment, Natural Resources Defense Council, National Parks Conservation Association, NC Waste Reduction and Awareness Network, Nevada Nuclear Waste Task Force, New England Coalition, Northwest Environmental Advocates, Nuclear Information and Resource Service, Mark Oncavage, Physicians for Social Responsibility, Riverkeeper, the SEED Coalition, San Luis Obispo Mothers for Peace, and Southern Alliance for Clean Energy.

In the Notice, the NRC gives no hint of what is the agency action that creates the risk of spent fuel storage environmental impacts, and thus requires commenters to guess at the action. Moreover, what little factual information is presented in the Notice is likely to mislead commenters into viewing the proposed action and its alternatives as some combination of methods for storing spent fuel. Such a truncated scope of alternatives would be far too narrow to satisfy NEPA because it would not address the original agency action that causes the production of spent reactor fuel and its impacts: the licensing of nuclear reactors. Therefore the scoping process would not lead to any analysis of the most obvious alternative for the avoidance or mitigation of spent fuel storage impacts: the cessation of reactor licensing.

Without a clear description of the proposed action and its most obvious alternative, the Notice is fatally deficient. The Notice therefore should be withdrawn and republished with a clear description of the NRC action that leads to spent fuel storage impacts: licensing of nuclear reactors. It should also identify the no-action alternative: the cessation of licensing and re-licensing, which would halt further production of spent fuel.

If the NRC does not withdraw the scoping notice, we believe that to be consistent with the requirements of Section 51.47(a)(2), the NRC must re-publish a second scoping notice after this commenting period expires, identifying the proposed action and alternatives of which the NRC is aware, and seeking further comment.

Thank you for considering our concerns and please do not hesitate to contact us if you have additional questions.

Sincerely,

/s/

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² On behalf of Natural Resources Defense Council

³ On behalf of organizations and individuals listed in note 1.

⁴ On behalf of organizations and individuals listed in note 1.