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# NRDC's Perspectives on Waste Confidence/Continued Storage GEIS & Rule



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# Three Primary Points

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- NRDC and NRC have different understandings of what the National Environmental Policy Act (NEPA) requires of NRC.
- NRC's failure to formulate and compare distinct and environmentally meaningful alternatives is unlawful.
- NRDC provided NRC with a way forward, but the agency declined to take up the opportunity.

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## And a fourth point ....

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None of what said here today is new, adds to the record before the agency, or should in any way impact the pending consolidated appeals before the United States Court of Appeals for the DC Circuit.

NRDC's December 20, 2013 comments on the Draft Generic EIS are instructive and outline our position on substantive matters.

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# A Fundamental Disagreement

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- NRC thinks the major federal action at issue here is whether or not it writes a rule.
- NRDC thinks the major federal action is the continued licensing of nuclear power plants that produce nuclear waste that must be stored and managed, possibly indefinitely, pending final disposal.
- We think the Court's 2012 decision comports with our perspective.

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# NRC's Proposed Federal Action

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“The Federal action is the adoption of a revised Rule, 10 CFR 51.23, which codifies (i.e., adopts into regulation) the analysis in the GEIS of the environmental impacts of continued storage of spent fuel.” At 1-5.

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# NRC's Purpose for the Proposed Action

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“The purpose of the proposed action is to preserve the efficiency of the NRC's licensing processes with respect to the environmental impacts of continued storage.” At 1-6.

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# NRC's Alternatives

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- First, the NRC could take no action and address the environmental impacts from continued storage in each of its nuclear power plant and ISFSI initial licensing and license renewal proceedings.
- Second, the NRC could develop a GEIS without incorporating the results into a rule. This approach would allow the NRC to adopt these draft GEIS findings into environmental reviews for future licensing activities, but without the binding effect of a rule.
- Third, the Commission could issue a policy statement. The policy statement would not bind licensees and applicants like a rule, but it would provide notice of the Commission's intent to incorporate the findings of the GEIS into environmental reviews for future licensing activities." At 1-6/9.

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# NRDC's perspective

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We know of no comparable instance in which a Federal Agency proposing a major federal action - much less one responding to specific NEPA direction from a Federal Court - has sought to substitute a *cost-benefit comparison of alternative procedural pathways for NEPA analysis* in place of the required substantive and searching *environmental impact comparison of reasonable alternatives* required under NEPA.



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# NRDC's Suggested Framing

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A legally compliant definition of a proposed action:

*The NRC proposes to reinstate, as a pre-determined stage of its individual licensing actions for nuclear reactors and Independent Spent Fuel Storage Installations, a binding rule that generically considers, and determines for the purposes of future licensing, reasonably foreseeable and cumulative environmental impacts of continuing to store on the surface of the earth for extended periods, including indefinitely, all spent fuel previously generated and requiring storage pursuant to past Commission licensing actions, and any spent fuel that would be generated pursuant to pending and reasonably foreseeable licensing actions the Commission may undertake in the future.*

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# NEPA Implications

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- A Draft GEIS must analyze the environmental consequences of reasonable alternatives for actually *implementing* continued storage of spent fuel the Commission may authorize in future commercial power reactor and spent fuel facility licensing actions.
- A NEPA compliant analysis must embrace a range of reasonable surface storage alternatives with greater or lesser environmental impacts, over a relevant range of time periods extending from an initial 20-year license renewal to indefinite storage. For more distant time periods, the analysis must consider the consequences for the human and natural environment in the absence of institutional controls.

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# NRDC Provided Matrix of Meaningful Alternatives

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- Relevant timescales
- Alternative Storage Modes & Configurations (Spent Fuel Pools with At-Reacto Dry Storage)
- Safety-Relevant Classes of Spent Fuel Requiring Continued Storage
- Storage Cask Technology Options
- Reliance vs. Erosion of Institutional Controls as a Function of Time

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# NRDC's Suggested Reasonable Alternatives

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- No Action: continued storage of SNF discharges "baked-in" under *existing* licenses
- RA #1: "License Extension Only" (based on current SFP/ISFI licenses)
- RA # 2: Store SNF from current licensed & proposed reactors with COLs received by 12-31-2030
- RA # 3: Constant Nuclear Market Share Scenario
- RA# 4: Nuclear "Major Growth" Scenario

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# END

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