

Nuclear Industry Perspectives on the Continued Storage Rule

Jonathan M. Rund
Assistant General Counsel
Nuclear Energy Institute

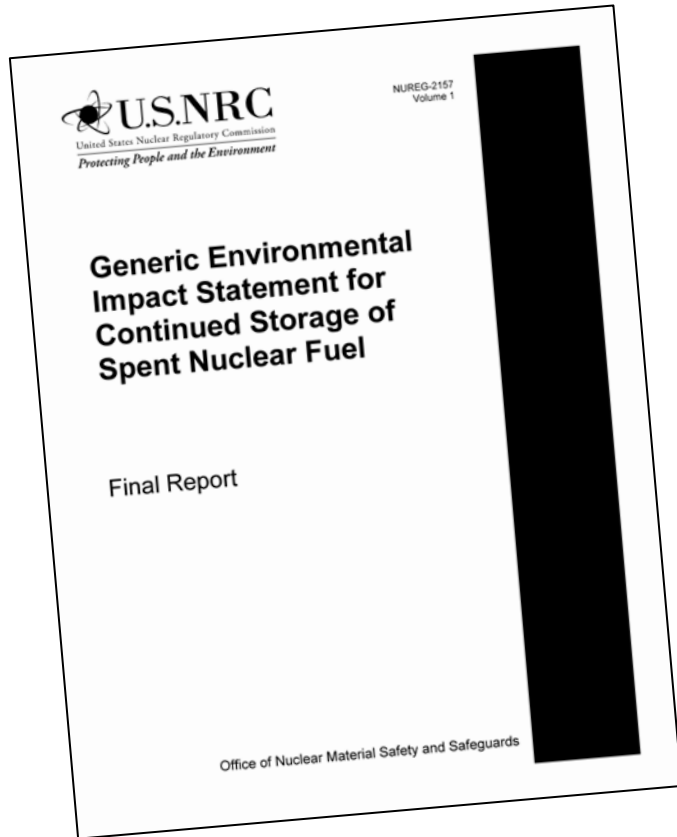
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Continued Storage of Used Fuel

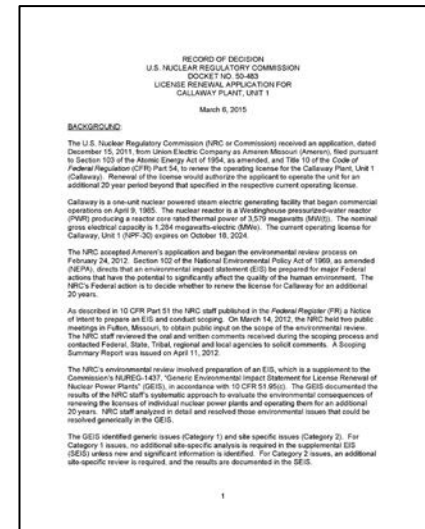
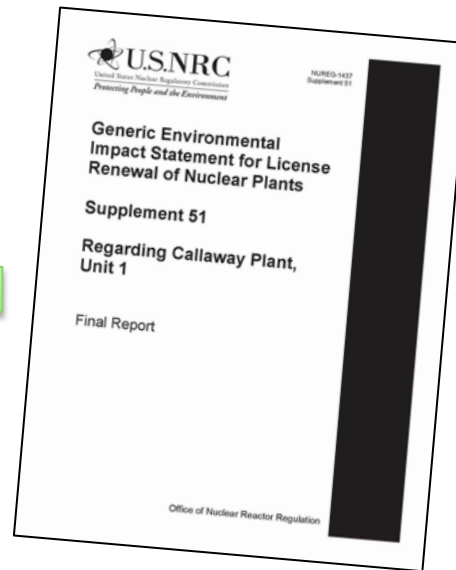
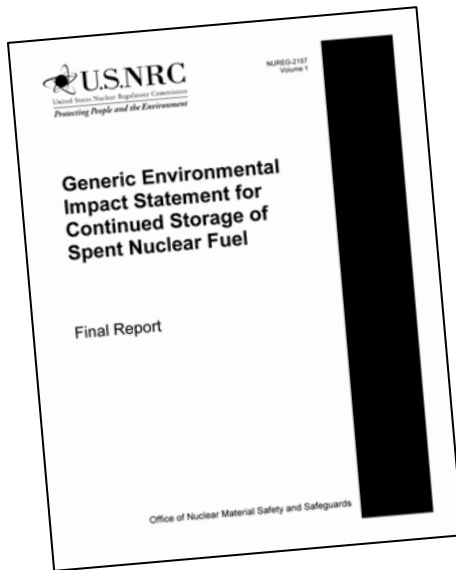


- Continued Storage Rule and Generic Environmental Impact Statement (GEIS)
 - Issued Sept. 19, 2014, effective Oct. 20, 2014
 - Several environmental groups and states challenged rule before NRC and in U.S. Court of Appeals

What does the Continued Storage Rule do?

- Addresses *New York v. NRC* (D.C. Cir. 2012)
 - Vacated Temporary Storage Rule and Waste Confidence Decision; remanded to NRC for further NEPA review
- GEIS generically evaluates environmental impacts of storage beyond a reactor's licensed life and before disposal
- Rule codifies GEIS determinations
- GEIS determinations inform licensing decisions

How does this work?



**Continued Storage
GEIS**

**Site-Specific EIS
(and other relevant NEPA docs)**

Licensing Decision

Administrative Litigation

- February 26 Commission denied suspension petitions filed in 17 reactor license proceedings
 - Petitioners claimed AEA requires NRC to make repository safety findings to issue reactor licenses
 - Commission reiterated longstanding view that AEA requires no such finding to issue reactor licenses
 - Commission also confirmed continued validity of GEIS determinations regarding technical feasibility of safe spent fuel storage and ultimate repository disposal

Administrative Litigation (cont.)

- Additional claims remain before the NRC
 - Motions to reopen to file “placeholder” contentions (*e.g.*, Fermi COL, Callaway LR)
 - Petitions to supplement site-specific EISs to incorporate Continued Storage GEIS
- But the NRC has continued issuing licenses
 - Mar. 6 NRC renewed Callaway operating license even though “placeholder” contention pending

Federal Court Litigation

- Before U.S. Court of Appeals for D.C. Circuit
 - Court has consolidated separate lawsuits filed by:
 - New York, Connecticut, and Vermont
 - Prairie Island Indian Community
 - Natural Resources Defense Council
 - Beyond Nuclear and numerous other groups
 - NEI, Entergy, and Xcel Energy have intervened in support of NRC
 - Massachusetts has intervened in support of states
 - Sierra Club will participate as *amicus*

Federal Court Litigation (cont.)

- Issues petitioners seek to litigate include:
 - the generic finding that severe accident impacts are small
 - consideration of substantive alternatives to continued generation and resulting storage of spent fuel at reactor sites
 - the assumption institutional controls will remain in place indefinitely
 - the generic finding that leaks from reactor spent fuel pools will likely have only a small environmental impact
 - consideration of potential mitigation measures
 - compliance with the federal government's "trust responsibility" to the Prairie Island Indian Community
 - compliance with the AEA

Severe Accident Impacts

- **Question:** Must NRC conduct site-specific analysis of severe accident impacts?
- **Response:** NRC has thoroughly evaluated the risks of spent fuel pool accidents, consistent with the D.C. Circuit remand.
 - Risk analysis includes probability and consequences— environmental impacts are small based on probability-weighted consequences
 - GEIS references substantial body of technical research on remote probability and potentially severe consequences of a spent fuel fire
 - Likelihood of spent fuel pool fires diminishes to zero as fuel cools
 - GEIS consistent with results of NRC's recent Consequences Study
 - NRC has accurately characterized the very low probability of a successful terrorist attack

Alternatives

- **Question:** Did the GEIS improperly fail to examine alternatives to the continued generation and resulting storage of used fuel?
- **Response:** NRC considered reasonable alternatives to rulemaking because, as D.C. Circuit said, the "rulemaking at issue here constitutes a major federal action."
 - NRC evaluated appropriate alts. to rulemaking: (1) no-action and site-specific consideration; (2) GEIS-only; and (3) policy statement
 - NRC considers alts. to licensing in connection with individual licensing decisions, including no-action and project alts.
 - Complete record (site-specific EIS + GEIS) takes required "hard look" at the issues involved, including impacts of continued storage

Institutional Controls

- **Question:** Did the NRC arbitrarily assume institutional controls will remain in place indefinitely?
- **Response:** NRC's assumptions regarding institutional controls are reasonable.
 - NEPA requires estimate of anticipated impacts; doesn't require consideration of "remote and speculative" impacts
 - GEIS reasonably assumes institutional controls
 - GEIS notes accident impact analysis provides surrogate for impacts from temporary loss of institutional controls
 - Permanent loss of controls is too remote for detailed eval. (but GEIS acknowledges it would have large impacts)

No Institutional Controls?



- What would NRC need to consider next?



Looking Forward

- The Commission decision on the suspension petitions may prompt additional lawsuits
 - After Commission issued decision on suspension petitions, NRC asked court to wait to see what petitioners do before setting briefing schedule
 - Court ordered parties to file motion to govern further proceedings by April 2
- Briefing would normally be completed in third or fourth quarter 2015, but schedule is unclear

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