

Dated at Rockville, Md., this 18th day of July, 1995.

For the Nuclear Regulatory Commission.

**James M. Taylor,**

*Executive Director for Operations.*

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## 10 CFR Part 72

[Docket No. PRM-72-1]

### Maryland Safe Energy Coalition; Denial of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-72-1) from Richard Ochs submitted on behalf of the Maryland Safe Energy Coalition. The petitioner requested several amendments to the regulations governing the independent storage of spent fuel in dry casks.

**ADDRESSES:** Copies of the petition for rulemaking, the public comments received, and the NRC's letter to the petitioner are available for public inspection and/or copying in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gordon E. Gundersen, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-6195.

#### SUPPLEMENTARY INFORMATION:

##### The Petition

On June 23, 1993, Mr. Richard Ochs, on behalf of the Maryland Safe Energy Coalition, filed a petition for rulemaking with the NRC.

The petition relates to generic requirements for the licensing of independent storage of spent fuel in dry casks found in the Commission's regulations contained in 10 CFR Part 72. In particular, Subpart B provides information required to be submitted in a license application, Subpart C provides requirements for the issuance and conditions of a license, Subpart D provides the requirements for the records that must be kept by a licensee, and Subpart E provides requirements for evaluation of the storage facility site.

The petitioner requested that the NRC amend 10 CFR Part 72 to read as follows:

1. In § 72.22(e)(2), "Contents of application: General and financial

information," add "Specify the planned life of the ISFSI."

2. In § 72.22(e)(3), "Contents of application: General and financial information," change "after the removal of spent fuel and/or high-level radioactive waste" to "if the spent fuel and/or the high-level radioactive waste is removed."

3. In § 72.42, "Duration of license; renewal," add a new paragraph (d) to read "No license will be issued before 90 days after the final safety evaluation report (SER) is published."

4. In § 72.44(c)(3), "License conditions," add paragraph (v) to read "dry storage casks must be monitored continuously for radioactivity at the exit cooling vents."

5. In § 72.46(d), "Public hearings," add "The time prescribed for a notice of opportunity for a hearing or petition for leave to intervene will extend from the notice of proposed action through 90 days after the final SER is published."

6. In § 72.72(a), "Material balance, inventory, and records requirements for stored materials," after the first sentence add "The records must include the history and condition of all spent fuel assemblies including a description of any defective fuel, such as fuel that is cracked, swollen, blistered, pinholed, or offgassing."

7. In § 72.104(a) "Criteria for radioactive materials in effluents and direct radiation from ISFSI or MSR," in place of "real" put "maximally exposed"; after "individual" add "or fetus"; change "25 mrem" to "5 mrem"; change "75 mrem" to "15 mrem"; and change "25 mrem" to "5 mrem". The sentence would then read, "\* \* \* dose equivalent to any maximally exposed individual or fetus who is located beyond the controlled area must not exceed 5 mrem to the whole body, 15 mrem to the thyroid and 5 mrem to any other organ \* \* \*"

This petition for rulemaking stems from earlier actions regarding the Calvert Cliffs Independent Spent Fuel Storage Installation (ISFSI). On December 21, 1992, the petitioner filed a petition requesting that the NRC institute a proceeding pursuant to § 2.206 with regard to the Calvert Cliffs ISFSI. In acknowledging the receipt of the December 21, 1992, petition, the Director, Office of Nuclear Material Safety and Safeguards, indicated that to the extent it addressed generic issues related to dry cask storage, the appropriate course of action would be to file a petition for rulemaking. The Director's decision dated August 16, 1993, denied the § 2.206 petition, Baltimore Gas and Electric Company (Calvert Cliffs Independent Spent Fuel

Storage Installation), DD-9-14 (August 16, 1993); 58 FR 44863 (August 25, 1993). This rulemaking petition filed on June 23, 1993, addresses many of the generic issues that were raised in the December 21, 1992, § 2.206 petition.

#### Basis for Request

As a basis for the requested action, the petitioner stated that, as an environmental consumer organization, the Maryland Safe Energy Coalition is interested in the minimization and safe storage of nuclear waste including spent fuel at nuclear power plant sites in general.

The petitioner indicated that it is particularly concerned about spent fuel storage at the Calvert Cliffs Nuclear Power Plant, which is operated by Baltimore Gas and Electric Company (BG&E). The petitioner stated that even though the spent fuel at Calvert Cliffs is stored under a specific Part 72 license, many of the generic requirements proposed by the petitioner would be the same or similar to the specific requirements applicable to independent spent fuel storage at Calvert Cliffs.

#### Public Comments on the Petition

A notice of filing of petition for rulemaking was published in the **Federal Register** on September 8, 1993 (58 FR 47222). Interested persons were requested to submit written comments or suggestions concerning the petition by November 22, 1993. The NRC received five comment letters from the industry and industrial associations, four from individuals, one from an environmental group, and two from governmental agencies. The commenters were evenly split, six supporting all or parts of the petition and six rejecting the petition. The supporters' comments generally supported the additional 90 days to review the Safety Evaluation Report (SER), the need for records because of the uncertainty of knowing how long the spent fuel will be stored, the need for continuously monitoring radiation leaving storage cask vents, and lower radiation limits. The commenters objecting to the petition were more specific, often citing the Director's decision under § 2.206, *Baltimore Gas & Electric Co.* (Calvert Cliffs Independent Spent Fuel Storage Installation), DD-93-14, August 16, 1993. Concerning extending the opportunity for hearing or petition to 90 days after the final SER is issued, the objecting commenters cited the NRC hearing and petition processes as providing ample opportunity for public participation. In refuting the lower radiation limits, the objectors cited studies and reports by respected organizations and other regulations