

YAEC SPENT FUEL STORAGE AND REMOVAL COMMUNITY
ADVISORY BOARD UPDATE
May 2011

YAEC ISFSI SITE UPDATE

ISFSI Operations

ISFSI Operations are normal.

The State of Massachusetts has received permission from National Grid to place a Sonic Detection and Ranging (SODAR) wind profiler to measure wind patterns on the Yankee Rowe site in their right of way. The State plans to move forward with this installation this spring.

Ground and Surface Water Sampling Program

Yankee was notified by the MADEP with a request to cease Yankee's current program for closing abandoned groundwater monitoring wells – even though the wells are no longer part of the approved groundwater monitoring program. Yankee is developing a technical response to the MADEP notification letter and will be scheduling a meeting to discuss the matter.

The next round of Ground and Surface Water Sampling is scheduled for April 2012.

Federal Nuclear Waste Management Program Update

Blue Ribbon Commission:

The BRC and the three Subcommittees held several meetings since the October FSAC update report and a full Blue Ribbon Commission meeting was held on May 13 in Washington DC. The Commission's draft report is due this July and the final report by January 2012.

The BRC staff issued a report April entitled "What We Heard" that summarized the key themes that the BRC had heard up to that point in the process. When publishing the report, the Commission requested that individuals and organizations who had given them input confirm that their key messages had been heard or to highlight something that may have been missed. In response, Wayne Norton sent a letter on behalf of Yankee Rowe and the Decommissioning Plant Coalition emphasizing their omission of the number of comments on the record that were supportive of national centralized interim storage and priority removal for decommissioned plant sites (copy attached).

At the recent full Blue Ribbon Commission meeting on May 13, 2011 in Washington DC, the BRC Subcommittees reviewed their draft recommendations. The draft Transportation & Storage Subcommittee included the following recommendations favorable to Yankee

Rowe: (#1) "The United States should proceed expeditiously to establish one or more consolidated interim storage facilities as part of an integrated, comprehensive plan for managing the back end of the nuclear fuel cycle"; and, (#3) "Spent fuel currently being stored at decommissioned reactor sites should be "first in line" for transfer to a consolidated interim storage facility as soon as such a facility is available."

In making its recommendation to expeditiously establish consolidated interim storage facilities, the Subcommittee Chairmen specifically cited the removal of fuel from decommissioned sites as allowing the US government to demonstrate it can meet its obligations, allow reuse of the sites, and provide efficiencies in the security mission. The Subcommittee recommendations had support among the other members and we are hopeful that they will not change prior to the publication of the full BRC draft recommendations report due out this summer.

The T&S Subcommittee slides and other Subcommittee recommendations can be accessed at http://www.brc.gov/may_13_2011_meeting.html.

DOE Waste Management Program:

The DOE continued to faithfully follow the President's direction and has completely dismantled the Office of Civilian Radioactive Waste Management and the Yucca Mountain project.

Yucca Mountain License Application:

The NRC Commissioners have not yet ruled on the ASLB Yucca Mountain decision denying the DOE's motion to withdraw the Yucca Mountain License Application – and there is no date required or scheduled for them to do so.

The US Court of Appeals heard oral argument in March in the consolidated petitioners (Aiken County; states of SC and WA) lawsuit opposing DOE's withdrawal of the Yucca Mountain License Application case - the Court has not yet issued any decision thus far.

The Yucca Mountain NRC Atomic Safety & Licensing Board denied a motion to stay the case and in April the DOE filed a motion with the NRC Commissioners asking them to review the ASLB's decision denying the stay.

NRC Waste Confidence Rule

The NRC published the long-awaited waste confidence final rule amending the Commission's generic determination on the environmental impacts of storage of spent fuel at, or away from, reactor sites after the expiration of reactor operating licenses. These revisions reflect findings that the Commission reached in its update and supplement to the 1990 Waste Confidence decision which was also published.

The Attorney General's from New York, Connecticut and Vermont filed a lawsuit in the D.C. Circuit (in February 2011) challenging the NRC's waste confidence rule. The suit challenges that NRC violated the Federal Administrative Procedures Act and NEPA when it found that – without conducting site specific studies – that no significant safety or environmental impacts will result from storing HLW onsite at more than 100 sites around the country for 60 or more years after the reactors are closed. The Prairie Island Indian Community and the Natural Resources Defense Council also filed motions in the U.S. Court of Appeals challenging the NRC's revised Rule.

NRC's commissioners approved the agency staff's plan to review regulations for extended storage of spent fuel and its transportation off-site after storage. In a January 2011 memo, the commission directed the NRC staff to combine that effort with a separate initiative to plan for a long-term waste confidence rulemaking that will also address the impacts of storing spent fuel beyond 120 years. The NRC staff issued its plans in late February and will: 1) develop a long-term Waste Confidence (WC) rule, including an environmental impact statement (EIS) and updated WC decision, for the handling and extended storage of spent nuclear fuel for more than 60 years after a reactor's licensed life; and, 2) describe the integration of WC activities with the extended storage and transportation project plan activities. The Staff considers a timeframe of up to 300 years of storage to be appropriate for characterization and prediction of aging effects and aging management issues for extended storage and transportation. The Staff plans to complete a WC update in FY 2016.

Congressional Update

The Continuing Resolution for FY 2011 that passed this April closed out the DOE's Office of Civilian Radioactive Waste Management (OCRWM) and the Yucca Mountain project. The DOE's Office of Nuclear Energy will integrate any nuclear waste disposal related activities into its fuel cycle program. The bill included \$10 million for the NRC to use from the Nuclear Waste Fund, but the NRC budget request for FY 11 indicates that those funds will only be used for closing out the Yucca Mountain license application and alternative geologic disposal or other spent fuel management options.

The House Appropriations Energy and Water Development Subcommittee held a hearing on the FY 2012 DOE budget in April - Acting Assistant Secretary Pete Lyons and NRC Chairman Greg Jaczko testified. Congressman Olver (D-MA) is a member of the Committee and raised several questions about keeping fuel on plant sites for many years.

Other Related Efforts Update

Yankee continued to work with the Decommissioning Plant Coalition, as well as the New England Governors' Conference and the New England Council, and others to communicate to the administration, congress, and the BRC the shutdown reactor spent fuel storage issues and the basis for priority attention to the needs of the shutdown reactor

sites. Yankee will also continue its efforts to expedite the removal of the fuel from the site through organizations such as the Nuclear Waste Strategy Coalition; the Nuclear Energy Institute; and the National Association of Regulatory and Utility Commissioners. The continued support of these organizations will hopefully result in recommendations from the BRC that support our priority removal efforts.

The MIT Center for Advanced Nuclear Energy Systems issued a report in December co-authored by Dr. Andy Kadak entitled, "Key Issues Associated with Interim Storage of Used Nuclear Fuel". The first recommendation in the report is: "Remove spent fuel from decommissioned reactor sites to an existing secure national facility that has the infrastructure to support long term storage. Should this not be possible, build a centralized interim storage facility capable of storing 3,000 MTHM of spent fuel from decommissioned reactors that could be expanded as needed when other operating reactor sites are decommissioned in the 2030 time frame."

The full MIT report on "The Future of the Nuclear Fuel Cycle" was released in late April (a summary report was published last September). The study addressed nuclear waste storage in the U.S. and the recommendations included the following: "The possibility of storage for a century, which is longer than the anticipated operating lifetimes of nuclear reactors, suggests that the U.S. should move toward centralized SNF storage sites—starting with SNF from decommissioned reactor sites and in support of a long-term SNF management strategy." Also, "We recommend that the U.S. move toward centralized SNF storage sites—starting initially with SNF from decommissioned sites and in support of a long-term SNF management strategy. The Federal government should take ownership of the SNF under centralized storage."

There were a number of press inquiries that the Yankee companies responded to as a result of the earthquake and tsunami impacts on the Japanese nuclear reactors and spent fuel storage systems.

The Massachusetts Legislature held a Nuclear Safety hearing in April that was conducted by the Joint Committees on Energy; Environment; Public Safety; and Public Health. Testimony was by request only - invited to testify were the Mass Attorney General; Citizen's Groups; the Patrick administration; ISO NE; Entergy; Next Era and Yankee Atomic. Bob Mitchell and Bob Capstick testified and their testimony focused on the Rowe ISFSI dry storage system design and the federal government's obligation to remove the SNF/GTCC.

DOE Spent Fuel Lawsuit Status Update

Yankee Phase I Cases

On September 7, 2010 the U.S. Court of Federal Claims issued a favorable decision in the Yankee Companies' ongoing litigation over the U.S. Department of Energy's failure to remove Spent Nuclear Fuel and Greater than Class C Waste from the three New England Yankee nuclear reactor sites as required by contract and law was appealed by the government. The approximate damages awarded to the three Yankee companies were:

Yankee Atomic Electric Company, \$21 million; Connecticut Yankee Atomic Power Company, \$40 million; and Maine Yankee Atomic Power Company, \$82 million.

The federal government appealed that decision and the government's final brief on their appeal was required to be filed on May 6, 2011, but they requested an extension of time. Yankees' cross-appeal reply will be filed after DOE's filing. After the briefs are in, the appellate court will schedule a date for the oral argument.

While the damage award is good news for the Yankee Companies' ratepayers, the decision will not solve the problem of SNF and GTCC Waste remaining at the plant sites; however, the Yankee Companies are encouraged by the increasing number of voices calling on the federal government to remove SNF and GTCC waste from single-unit decommissioned reactor sites on a priority basis.

Background: To protect their rate payers, the three Yankee Companies first filed litigation in federal court in 1998 alleging that the federal government breached contracts entered into with each company in 1983 under the Nuclear Waste Policy Act. In October 2006 the US Court of Federal Claims awarded the Yankee Companies approximately \$143 million in damages for the period through the end of 2001 for CY and Rowe, and 2002 for MY. The federal government appealed this ruling. In August 2008, a U.S. Court of Appeals panel vacated the Court of Federal Claims decision sending the case back to the Claims Court. A key finding of the Court of Appeals decision was that the awards in the 2006 decision needed to be recalculated based upon a court-approved fuel pick up rate.

Yankee Phase II Cases

In December 13, 2007 the Yankee Companies filed a second round of damages claims in the U.S. Court of Federal Claims. Yankee reached an agreement with the government to settle the ongoing discovery disputes agreeing to extend the discovery period. This will result in an approximate two month delay in the start of the trial, until October 11, 2011.

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Dr. Richard A. Meserve
The Honorable Phil Sharp
Co-Chairs, Transportation and Storage Subcommittee
Blue Ribbon Commission on America's Nuclear Future
1000 Independence Avenue, S.W.
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Dear Co-Chairs Meserve and Sharp;

I have taken the opportunity to review the recently published, "What We Heard," document and believe that you and your staff have captured well the overarching themes that were presented with one outstanding exception. I and my fellow Decommissioning Plant Coalition members are concerned that the document did not capture our belief that, as part of an integrated strategy of spent fuel management, spent nuclear fuel and GTCC waste from permanently shut-down facilities be accepted and shipped to a centralized interim storage facility on a priority basis as part of a demonstration of the nation's ability to manage this material.

We are not alone in that belief. During the Subcommittee's meeting in Wiscasset, Maine, this past August you heard this message about assigning such priority from many organizations and individuals that participated, including:

- Former State Sen. Marge Kilkelley (who also chairs the Maine Yankee Community Advisory Panel),
- Hugh Curley (Chair of the Connecticut Yankee Fuel Storage Advisory Committee)
- John Kerry representing the Governor of Maine,
- Brian Whitney on behalf of U.S. Sen. Olympia Snowe,
- Bill Card representing U.S. Sen. Susan Collins,
- John Graham on behalf of U.S. Rep. Michael Michaud, and
- Nick Battista of U.S. Rep. Chellie Pingree's staff.
- Former State Senator Deb Simpson who also chaired the High Level Waste Working Group of the National Council of State Legislators,

- John Shea of the New England Governors Conference who recounted the position of all the Governors in their earlier letter to Secretary Chu,
- Brian O'Connell of the National Association of State Regulatory Commissioners,

At your meeting in Chicago last November, John Herron, President, CEO and CNO of Entergy Nuclear and representing DPC member Big Rock Point, advocated such treatment. At that same meeting, Dr. Kevin Crowley of the National Research Council advocated a pilot program of removing older fuel from decommissioned sites first to central interim storage. There have also been members of Congress who have weighed in on a bi-partisan basis about the importance of promptly removing these materials from our sites:

- An April 26, 2010 letter from Sen. Susan Collins (R-ME) to the Blue Ribbon Commission (BRC).
- An April 12, 2010 letter to the Co-Chairs of the BRC from Members of the U.S. House of Representatives having DPC facilities in their districts/states.
- A September 14 letter from the U.S. Senators from Connecticut to the Chairman and Ranking Member of the Senate Appropriations Subcommittee on Energy and Water Development.
- A July 10, 2009 letter to Secretary Chu from the U.S. Senators from Massachusetts.
- A March 24 letter from the U.S. Members of the House that have DPC facilities in their districts/states to the President.
- A January 15, 2009 letter to then-President-elect Obama from 5 U.S. Senators who have DPC facilities in their states.

Last fall, the Governor of Connecticut wrote to you as well.

There are many other organizations on all sides of the nuclear issue that have echoed this point – several with direct testimony to the BRC, including the following:

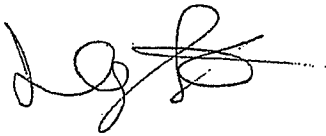
- the U.S. Department of Energy,
- the National Resources Defense Council,
- the Nuclear Energy Institute,
- the Nuclear Waste Strategy Coalition,
- the New England Council, among others.

I especially call your attention to the recommendations contained in a recent report of an interdisciplinary study group at MIT, "Key Issues Associated with Interim Storage of Used Nuclear Fuel", MIT Center for Advanced Nuclear Energy Systems. I am also enclosing (electronically) a summary of statements during the past several years that bear directly on the importance of removing DPC fuel and GTCC on a priority basis.

I appreciate the hard work that you are doing on the issue of spent fuel storage and transportation and recognize that your identification of the basic issue is, itself, recognition of its importance. I do believe that your Subcommittee's reflections upon, "What We Heard," must include the priority on moving this material from our sites that you have heard from so many and diverse voices. The DPC further urges that the BRC include this position in its draft and final recommendations.

I would be pleased to provide any of the documents I have referenced and am of course always available to discuss these matters with you.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Norton", with a long horizontal flourish extending to the right.

Wayne Norton
President & CEO, Connecticut Yankee and Yankee Rowe
CNO, Maine Yankee
Chairman, Decommissioning Plant Coalition