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

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–18319 Filed 7–25–95; 8:45 am]

BILLING CODE 7590–01–P

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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

including EPA's 40 CFR Part 190 and the recently revised 10 CFR Part 20. Additional information was also received from the petitioner. The petition and the comments received in response to the notice of filing are available for inspection in the NRC Public Document Room identified above.

Reasons for Denial

The NRC has considered the petitioner's requested amendments, the public comments received, and other related information. The following discussion addresses each of the seven parts of the petitioner's requested amendments quoted above and the NRC's response.

Part 1: The petitioner requests that § 72.22(e)(2) be revised by adding ''Specify the planned life of the ISFSI.''

In the existing § 72.22(e), there is already the requirement for the applicant to specify the period of time for which the license is requested. The petitioner's request is therefore unnecessary and redundant because the applicant is already required to specify the planned life of the ISFSI, that is, the period of time for which the license is requested.

Part 2: The petitioner requests that wording of § 72.22(e)(3) be changed from ''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.''

DOE is required by the Nuclear Waste Policy Act of 1982 to accept spent fuel for ultimate disposal. Moreover, the Commission made a generic determination in its Waste Confidence Decisions (September 18, 1990; 55 FR 38474 and August 31, 1984; 49 FR 34694) that there is reasonable assurance that safe disposal is technically feasible and will be available within the first quarter of the 21st century. The NRC therefore does not believe it is either necessary or appropriate to revise the existing wording of the regulation as requested by the petitioner.

Part 3 and Part 5: The petitioner requests a new paragraph (d) be added to § 72.42 to read ''No license will be issued before 90 days after the final safety evaluation report (SER) is published.'' The petitioner believes that significant new issues will be contained in the final SER. The petitioner also requests that the following be added to § 72.46(d): ''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.'' The petitioner states that if a notice of opportunity for a hearing or intervention is limited to a short period after the license application, interested parties may be prevented from obtaining a hearing based on the second or final SER. Information in the latter safety reports may impact on the advisability of issuing a license. The public should have the right and opportunity to comment on the final Safety Analysis Report (SAR) and SER before a license is issued.

An applicant for a site-specific dry cask storage license is required by § 72.24 to submit a detailed safety analysis report (SAR) with the application for license to the NRC. The applicant's SAR contains the detailed basis for requesting a license and, more particularly, for demonstrating compliance with NRC licensing standards. Following receipt of an application, the NRC publishes a notice of docketing an application for an ISFSI in the **Federal Register** as required by § 72.16(e). This notice, which may be combined with a notice of opportunity for a hearing, will typically indicate where a copy of the detailed SAR may be examined. An individual is allowed 30 days from the notice of proposed action to request that NRC grant a hearing in accordance with § 2.105 and § 2.1107. The 30-day period is provided so that the individual can review the license application and SAR and determine whether to request a hearing or intervention. The SAR will provide ample information for the individual to make the determination. At the same time, the NRC technical staff will commence its review of the SAR and other relevant documents and preparation of an SER. These documents and the license are placed in the NRC Public Document Room and the Local Public Document Room near the licensee site where they are also available for review. Should the SER contain a new issue (as opposed to new evidence on an issue apparent from the SAR) pertinent to the requested license, an interested party could seek late intervention or submit a late-filed contention as allowed by § 2.714. Finally, a party can petition the NRC to modify a license if new information comes to light after the license is issued. Thus, an individual has ample opportunity to participate in the ISFSI licensing process and to review and raise issues concerning the SER. Adding another 90-day delay in issuing the license would not significantly improve the process for licensing the safe operation of an ISFSI.

Part 4: The petitioner requests a new paragraph (v) be added to § 72.44(c)(3) to read ''dry storage casks must be monitored continuously for radioactivity at the exit cooling vents.'' The petitioner states that the exit vents are the most likely location of radioactive venting, and it is therefore logical that monitors would be required at these locations.

NRC regulations already require that the license (or Certificate of Compliance in the case of an NRC approved cask) include surveillance and monitoring requirements to determine when corrective actions need be taken to maintain safe storage conditions. See, e.g., 10 CFR 72.122(h)(4). In addition, radiation monitoring and environmental monitoring programs are also already required (e.g., 10 CFR 72.126), and these programs can be expected to detect any radiation leak in excess of NRC limits from an NRC-approved cask. Furthermore, the NRC-approved cask designs which use cooling vents and air flow between the fuel canister and the concrete biological shield for cooling also are designed to require double seal closure welds on the canister. These welds are inspected and the canister leak tested after being loaded. There is no known long-term degradation mechanisms which would cause the weld to fail within the design life of the canister. Therefore, the regulation proposed by the petitioner is not needed.

Part 5: The response to this part has been combined with the response to Part 3 and is addressed above.

Part 6: The petitioner requests that the following be added after the first sentence in § 72.72(a): ''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.'' The petitioner states that defective fuel can cause problems for safe storage; therefore, the history and condition of all spent fuel should be documented.

NRC regulations already require that the license (or Certificate of Compliance in the case of an NRC-approved cask) must include specifications for the conditions of fuel assemblies to be loaded into storage casks. See, e.g., 10 CFR 72.44(c). These regulations also require that licensees must demonstrate in procedures and records that the fuel load meets the cask design criteria. In addition, licensees must conduct loading operations in accordance with written procedures which must be specific enough to demonstrate that only fuel assemblies that meet the cask design criteria can be loaded. Licensees are required to maintain records, including the condition of the fuel, of

all fuel assemblies in storage casks or in the pool. See, e.g., 10 CFR Part 50 Appendix B, XVII, ''Quality Assurance Records,'' and 10 CFR 72.174, ''Quality Assurance Records.'' Therefore, additional records as proposed by the petitioner are not necessary.

Part 7: The petitioner requests the following revisions to § 72.104(a): 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 will 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 * * *''

The change of the word ''real'' to ''maximally exposed'' in § 72.104(a) is not needed. In the regulation, the word ''real'' in the phrase ''The annual dose equivalent to any real individual who is located beyond the controlled area * * *'' refers to an individual who lives closest to the boundary of the controlled area. This individual is, in general, the maximally exposed individual because other individuals are further away from the controlled area. If the petitioner's suggested words ''maximally exposed'' were adopted, it could mean that an imaginary individual would be continually present at the boundary of the controlled area. The NRC regulates radiation doses on the basis of real people in proximity to the boundary of the controlled area.

Section 72.104(a) establishes the bases for the amount of radioactive materials permitted in ISFSI effluents and direct radiation from an ISFSI. It imposes limits on the annual dose equivalent that is received by an individual who is located beyond the controlled area. The petitioner referred to a 1990 study by Alice Stewart that allegedly supports the conclusion that the standards incorporated in § 72.104(a) are too high for a developing fetus, women, and children. The petitioner cited additional references during the comment period.

Section 72.104(a) does not incorporate exposure limits that are unique to ISFSI operation. Rather, the exposure limits used in Part 72 are based on the Environmental Protection Agency's (EPA) Environmental Radiation Standards for fuel cycle facilities specified in 40 CFR Part 190. 45 FR 74693 (November 11, 1980). Moreover, the EPA, commenting on the proposed 10 CFR Part 72, stated: ''Our only comment of substance concerns your requirement that such independent storage facilities provide radiation protection consistent with the Agency's public health protection standards for the Uranium Fuel Cycle (40 CFR 190). We generally support your use of these requirements.''

The § 72.104(a) exposure limits are also consistent with the recent revision of 10 CFR Part 20—Standards for Protection Against Radiation which became effective on January 1, 1994. This revision was comprehensive in scope and reflects state-of-the-art data on radiation protection. This revision was based on recommendations and studies of expert groups through 1990, including the International Commission on Radiological Protection, the National Council on Radiation Protection and Measurements, the United Nations Scientific Committee on the Effects of Atomic Radiation, and the National Academy of Science's Committee on the Biological Effects of Ionizing Radiation (BEIR). Among other things, these studies analyzed the data on radiation exposure to a developing fetus. In sum, the NRC's radiation protection standards are based on a body of recent, authoritative, and substantial data. The petition fails to provide an adequate basis for its requested revisions to § 72.104(a).

It should also be noted that both 10 CFR Parts 20 and 72 have requirements to keep radiation exposures as low as reasonably achievable (ALARA). Experience to date with ISFSI operations has demonstrated that due to the conservative ISFSI designs and the application of ALARA requirements, the radiation levels associated with ISFSI operations are in fact well below regulatory limits.

For the foregoing reasons, the petition is denied.

Dated at Rockville, Maryland, this 11th day of July, 1995.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 95–18318 Filed 7–25–95; 8:45 am]

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DELAWARE RIVER BASIN COMMISSION

18 CFR Chapter III

Water Quality Regulations; Proposed Amendments to Comprehensive Plan, Water Code of the Delaware River Basin, Administrative Manual—Part III Water Quality Regulations; Public Hearings

AGENCY: Delaware River Basin Commission.

ACTION: Notice of proposed rulemaking and public hearings.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold public hearings to receive comments on proposed amendments to its Comprehensive Plan, Water Code and Water Quality Regulations concerning water quality criteria for toxic pollutants and policies and procedures to establish wasteload allocations and effluent limitations for point source discharges to Zones 2 through 5 (Trenton, New Jersey to the Delaware Bay) of the tidal Delaware River.

DATES: The public hearings are scheduled as follows: October 5, 1995 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

October 11, 1995 beginning at 1:30 p.m. and continuing until 5:00 p.m. and resuming at 6:30 p.m. and continuing until 9:00 p.m., as long as there are people present wishing to testify.

October 13, 1995 beginning at 1:30 p.m. and continuing until 5:00 p.m., as long as there are people present wishing to testify.

The deadline for inclusion of written comments in the hearing record will be announced at the hearings.

ADDRESSES: The October 5, 1995 hearing will be held in the Second Floor Auditorium of the Carvel State Building, 820 North French Street, Wilmington, Delaware.

The October 11, 1995 hearing will be held in the Franklin Room of the Holiday Inn at 4th and Arch Streets, Philadelphia, Pennsylvania.

The October 13, 1995 hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628. Telephone (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION:

Background and Rationale

The 1987 amendments to the Federal Clean Water Act required states to adopt water quality criteria for all toxic pollutants for which the U.S. Environmental Protection Agency has issued criteria guidance. This requirement resulted in a total of five separate sets of criteria which apply to the tidal portions of the Delaware River from the head of the tide at Trenton, New Jersey to Delaware Bay. In response, the Commission established