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A LETTER TO THE SECRETARY OF ENERGY WITH COMMENTS ON THE DRAFT PEIS ON STORAGE AND DISPOSITION OF WEAPONS-USABLE MATERIALS FROM THE ANS PAST-PRESIDENTS COUNCIL

April 28, 1996

Hon. Hazel O'Leary, Secretary
U. S. Dept. of Energy
1000 Independence Ave. SW
Washington, DC 20585

Attention: Department of Energy
Office of Fissile Materials Disposition
P. O. Box 23786
Washington, DC 20026-3786

By Fax: 800-820-5156

Dear Secretary O'Leary,

On August 10, 1995, the ANS Past Presidents Council submitted a letter regarding the Plutonium Disposition PEIS which analyzes alternatives for DOE future action. Among other things, our letter warned that, by implication, the PEIS could be used to claim that an open process had been used to eliminate reprocessing from all future nuclear fuel cycle decisions.

According to DOE, the IP says that this is not the case, and that the PEIS does not apply to commercial nuclear fuel cycles. However, we believe that some persons will choose to try to use this EIS to try to establish such prohibitions. Since irradiated MOX fuel is no different from any commercial reactor spent fuel (and some of us have participated in the irradiation of MOX fuel assemblies in licensed commercial reactors in the U. S.) any decision on future reprocessing of spent fuel, regardless of whether plutonium atoms in it came from excess weapons material or not, has no place in this EIS. And therefore any decisions about processes to be used for disposition of excess weapons material cannot have any bearing on future decisions by the United States about reprocessing of any commercial spent fuel. 1/01.02.00

Our letter asked that this be made clear. DOE's response (Letter from Greg Rudy, Acting director, Office of Fissile Materials Disposition to John Graham, President ANS, Sept. 8, 1995 - copy attached) says:

"... any subsequent reprocessing and extraction of plutonium from that spent fuel is beyond the scope of the PEIS and the fundamental nonproliferation purpose of this report."

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01 02 00 Comment Number 1

The Department of Energy noted the comment requesting a statement in the Summary making it clear that future reprocessing decisions are beyond the scope of this PEIS. A clarifying statement was included in the Summary of the Final PEIS.

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We fully agree. We expected to find this statement explicitly made in the PEIS. We have not found it. It belongs in the "SCOPE OF THE PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT" section on Page S-4 of the SUMMARY of the EIS draft dated February 1996.

We have not found this statement in the PEIS, although we must admit that, in light of the volume of the report, we might have missed it. In any event, it belongs in a very visible place in the SUMMARY. We believe that failure to include this statement in a visible place in the SUMMARY may result in misreading and abuse of the document. This was one of the key points of our earlier comments.

We see no reason why this statement, a statement made very explicitly in Mr. Rudy's letter, should not be clearly made. We are counting on you to see that this is done. 1/01.02.00 cont.

It may sound like an item of limited interest at this time. We do not believe this to be the case. In any event, we do not feel that the Department has any reason for anything less than a full and complete response to our request.

Should the Department fell differently, we urge you to contact us at once.

If the Final EIS is published without clarifying this issue, in a manner as clear as we have suggested above, a clear basis will exist for a court challenge to the EIS, which a court might find would require a reprinting and redistributing of the entire EIS. This would be a waste of Federal funds which we would be disappointed to see.

We thank you for your attention to this matter.

Sincerely,

A. David Rossin for

The American Nuclear Society Past-Presidents Council

(Signatures appear on the last page of the enclosed letter dated August 10, 1995.)

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Department of Energy
Washington, DC 20585

September 8, 1995

Mr. John Graham
President
American Nuclear Society
555 North Kensington Avenue
La Grange Park, IL 60526

Dear Mr. Graham:

Thank you for your letter to Secretary O'Leary dated August 10, 1995, and its enclosed letter from past presidents of the American Nuclear Society (ANS) regarding the Implementation Plan for the Department's Programmatic Environmental Impact Statement (PEIS) on surplus plutonium disposition. I have been asked to respond to your letter because, as the Acting Director of the Office of Fissile Materials Disposition, I am responsible for the PEIS.

In their letter, the past ANS presidents raise the concern that "the implementation plan systematically eliminates from debate every option that involves any future possibility of reprocessing of spent nuclear fuel." The letter requests that the pros and cons of spent fuel reprocessing be discussed in the PEIS.

The specific purpose of the Department's PEIS effort is to evaluate alternatives for the disposition of surplus weapons-usable plutonium that would render the plutonium as inaccessible and unattractive for reuse in nuclear weapons as the much larger and growing quantity of plutonium that exists in spent nuclear fuel from commercial power reactors. This condition is referred to as the "Spent Fuel Standard." As noted in the PEIS Implementation Plan, the use of plutonium as mixed oxide fuel in reactors is being evaluated as one of the potential disposition options. If an alternative using mixed oxide fuel in reactors were to be selected, the surplus plutonium would eventually be contained in spent fuel and, by definition, the "Spent Fuel Standard" would be achieved.

While the PEIS will discuss the generation of spent fuel as an indirect result of potential disposition actions, any subsequent reprocessing and extraction of plutonium from that spent fuel is beyond the scope of the PEIS and the fundamental nonproliferation purpose of the disposition effort. The fact that the PEIS will evaluate disposition of surplus weapons plutonium through use in mixed oxide fuel, but will not further evaluate reprocessing of the spent fuel, will not foreclose policy or technology options, nor will it prejudice future decisions regarding the management or disposition of the spent fuel.

I hope this response has helped to better explain the Department's perspective and our intended path forward for the PEIS on the disposition of surplus weapons plutonium.

Sincerely,

Greg Rudy
Acting Director
Office of Fissile Materials Disposition

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Storage and Disposition of Weapons-Usable Fissile Materials Final PEIS

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AMERICAN NUCLEAR SOCIETY

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August 10, 1995

The Honorable Hazel O'Leary
Secretary
US Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Plutonium Disposition PEIS
Implementation Plan

Dear Secretary O'Leary,

In March 1995, the Department of Energy issued an Implementation Plan for work to develop the Programmatic Environmental Impact Statement for the Storage and Disposition of Excess Weapons Material. Copies of this Implementation Plan reached some American Nuclear Society (ANS) members in late May.

At the 1995 Annual Meeting of the ANS in June in Philadelphia, Pennsylvania, this Implementation Plan was discussed by members who expressed concern with the way in which the screening process was used to exclude valid options which include the reprocessing of spent fuel.

A number of Past Presidents of the Society were concerned enough to draft the attached letter to you on this subject.

I am pleased to submit the enclosed letter, signed by 19 of the ANS Past Presidents, to you. Although no formal survey was attempted to represent the views of the entire membership of this Society, it is evident to me that the concerns expressed by our Past Presidents are shared by current ANS Officers and the overwhelming majority of members.

Since most of the names of the Past Presidents are familiar to DOE, their affiliations are not indicated. However, if biographical information on any or all of them is desired, do not hesitate to contact ANS Executive Director James G. Toscas at ANS Headquarters.

Sincerely,

John Graham

Enclosure: Statement of ANS Past Presidents

xc: Mr. Greg Rudy, DOE
Senator Frank Murkowski
Honorable Warren Christopher, Secretary of State
Honorable William Perry, Secretary of Defense
ANS Officers
ANS Past Presidents
Mr. Patrick Murphy, ANS Washington Representative

Leaders in the development, dissemination and application of nuclear science and technology to benefit humanity.

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August 10, 1995

The Honorable Hazel O'Leary
Secretary
US Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585

Re: Plutonium Disposition PEIS
Implementation Plan

Dear Secretary O'Leary:

We have reviewed the Plutonium Disposition PEIS Implementation Plan (IP) dated March 1995. We realize that this effort has been in progress for almost two years and that work on the PEIS has already proceeded based on this plan. However, we respectfully request that this plan be withdrawn and a new Implementation Plan be developed which would meet the minimum requirements for preparation of a Programmatic Environmental Impact Statement on the Long-Term Storage and Disposition of Weapons-Usable Fissile Materials (PEIS). This Implementation Plan does not do so. We will explain why below.

This IP systematically eliminates from debate every option that involves any future possibility of reprocessing of spent nuclear fuel. In so doing, it eliminates the opportunity for the public even to hear about options that may be shown to be highly desirable from non-proliferation, waste management, environmental, and long term economic points of view. The reasons offered could, if allowed to stand, be applied blindly in the future decision-making on nuclear power fuel cycles. This risk, we believe, would be both serious and improper.

We recognize that there are people who believe the opposite, but the analyses that have been presented to support their views have not been convincing. In any case, there is no valid reason to prevent those arguments, pro and con, from being fairly and openly aired in this PEIS. In fact, based on the history of the Environmental Policy Act, analysis of real options would be required.

Although disclaimers are offered to say that the PEIS refers only to excess weapons material, DOE has chosen to call all separated plutonium, regardless of isotopic composition "weapons usable." By implication, the PEIS could be used to claim that an open process had been used to eliminate reprocessing from all future nuclear fuel cycle decisions. The IP says that this is not the case, and that the PEIS does not apply to commercial fuel cycles. But the reasons for these systematic exclusions are in themselves weak. Not considering these options in the PEIS could well give the public a seriously incomplete picture.

The options that would allow reprocessing have been eliminated from discussion by the use of "screening criteria." Many persons, including some of us, provided input during the comment period at public meetings and in writing about the danger of using screening criteria to silence debate on real alternatives. Despite our comments, DOE has decided to preclude a full and fair consideration of alternatives.

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We are all very familiar with the EIS process. We all recall decisions that went as high as the Supreme Court with regard to what had to be included in an EIS in order to make it a valid part of the process. With this in mind, we offer the following for your consideration:

1. One cannot legally screen out a particular process on the grounds of "lack of technical maturity" when it is or has been in actual operation, and in some cases is in full commercial operation.

2. One cannot legally screen out a particular process on the basis of "theft/diversion" when processes (actually based on technology developed in the US) are in commercial operation in two countries with fully adequate and demonstrated resistance to theft and diversion.

3. One cannot legally screen out an option on the basis of a so-called "policy" of prohibiting reprocessing when such a Presidential policy has not been subjected to public debate, when it has been applied for five years, then rescinded for 12 years, and then stated again in late 1993 as a reality rather than a national policy. Such a so-called policy itself cries out for open public discussion.

Considering DOE's policy of openness that you have declared, the tactic of disallowing technologically viable options by screening them out of a programmatic environmental assessment in advance, without a sound and compelling basis, should be repugnant to you.

Each of us has agreed to be available to you and your staff to discuss this matter. However, we urge you to act promptly to withdraw this IP. In its present form, we find it hard to imagine that either it, or more importantly a PEIS based on it, would survive a court test, in light of the extensive legal history that has been developed over the past 25 years.

Sincerely,

Past Presidents of the American Nuclear Society
(signatures appear on the following page)

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SIGNED BY THESE MEMBERS OF THE ANS PAST-PRESIDENTS COUNCIL:

Dr. Manson Benedict | Mr. Vincent S. Boyer | Dr. Karl P. Cohen

Mr. Ed Fuller | Dr. Joseph M. Hendrie | Dr. William R. Kimel

Dr. Harry Lawroski | Mr. Milton Levenson | Dr. Miles C. Leverett

Mr. James R. Lilienthal | Dr. Walter B. Loewenstein | Dr. Robert L. Long

Dr. M. Jack Ohanian | Dr. A. David Rossin | Dr. Chauncey Starr

Mr. Ronald C. Stinson | Dr. Alan Waltar | Dr. Alvin M. Weinberg

Dr. Bertram Wolfe

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