

April 29, 1996

The Honorable Hazel O'Leary  
Secretary of Energy  
U.S. Department of Energy  
1000 Independence Ave. SW  
Washington, DC 20585

### **Request for Extension of Public Comment Period On Weapons Plutonium Disposition Draft PEIS**

Dear Secretary O'Leary:

We are writing to request that you extend the period for public comment on the *Storage and Disposition of Weapons-Usable Fissile Materials Draft Programmatic Environmental Impact Statement*, DOE/EIS-0229-D, February 1996 (hereafter "DPEIS"). The comment period is currently scheduled to end on May 7, 1996. An extension of this period is required for at least two important reasons.

First, some key studies supporting the DPEIS are not publicly available in the Department of Energy reading room, as required by NEPA. As of April 25, at least two important analyses were not available: a study by AECL Technologies of plutonium use in CANDU reactors, and a study by Fluor Daniel Inc. of beyond-design-basis accidents.<sup>1</sup> All EIS supporting material must be readily available so that public comments can be informed and thorough. DOE has recognized the importance of this NEPA principle in its recent decision to extend the public comment period on its pyroprocessing environmental assessment, because of the unavailability of some support documents.<sup>2</sup>

Second, two key DOE analyses of plutonium disposition alternatives are not yet completed. DOE is still preparing a cost analysis and a non-proliferation analysis of disposition options. At the April 18 public hearing on the DPEIS, Greg Rudy, head of the Office of Fissile Material Disposition, stated that those analyses would eventually be made available to the public when completed, but not prior to the end of the comment period on May 7.

Mr. Rudy claims that these analyses are not required for inclusion in the PEIS process which focuses on environmental issues. This is an inappropriately narrow view of the scope of programmatic environmental impact statements. Previous EIS's, such as the spent fuel take-back PEIS, have included detailed nonproliferation analysis, even making non-proliferation a primary decision criterion.<sup>3</sup> Cost analysis has been included as a decision factor in some EIS's as well.<sup>4</sup> Even the draft plutonium disposition DPEIS explicitly cites "non-proliferation," "security," and "cost-effectiveness" as among the screening criteria used in the disposition PEIS process to rule out certain disposition alternatives.<sup>5</sup> Certainly the analyses used to support these cost and non-proliferation decisions should be incorporated into the PEIS itself.

NEPA specifically requires that cost analyses, if prepared, be made a formal part of the EIS process. CEQ regulations, adopted by DOE for its implementation of NEPA,<sup>6</sup> provide that "[i]f a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it *shall be incorporated* by reference or appended to the statement as an aid in evaluating the environmental consequences. . . ."<sup>7</sup> Courts have upheld this requirement, holding that "[t]he cost-benefit analysis of alternatives must be contained within the environmental impact statement standing alone, and not as complemented by the administrative record."<sup>8</sup>

We therefore ask that the public comment period be extended until 45 days after all relevant support documents, including the cost and non-proliferation analyses, are made publicly available. As the May 7 deadline rapidly approaches, we request your immediate attention to this urgent matter.

Sincerely,

Paul Leventhal  
Nuclear Control Institute

Tom Clements  
Greenpeace International

Fred Millar  
Nuclear Waste Citizens Coalition

Tom Zamora-Collina  
Institute for Science & International Security

Paul Gunter  
Nuclear Information Resource Service Daryl Kimball  
Physicians for Social Responsibility

cc: Greg Rudy

J. David Nulton

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## End Notes

1. AECL Technologies, Inc., *Plutonium Consumption Program CANDU Reactor Project, Final Report*, prepared under Contract DE-AC03-94SF 20218 for the U.S. Department of Energy, Washington, DC, July 31, 1994 [reference "AECL 1994a," DPEIS, v. 2, p. 5-3]; Fluor Daniel, Inc., *Beyond Design Basis Accident Analysis*, prepared for the U.S. Department of Energy, Office of Fissile Materials Disposition, Washington, DC, Revision A, August 1995 [reference "DOE 1995mm," DPEIS, v. 2, p. 5-17]. [Back to document](#)
  2. *Federal Register*, April 15, 1996, 16471. [Back to document](#)
  3. *Final Environmental Impact Statement: Proposed Nuclear Weapons Nonproliferation Policy Concerning Foreign Research Reactor Spent Nuclear Fuel*, DOE/EIS-0218F, February 1996, Summary, pp. 51-59 (non-proliferation impacts of alternatives analyzed and compared); *Draft F-Canyon Plutonium Solutions Environmental Impact Statement*, DOE/EIS-0219D, August 1994, p. 2-13 ("security and nonproliferation" decision criterion "relates to how well each alternative supports national security objectives and nonproliferation"); *Draft Environmental Impact Statement: Interim Management of Nuclear Materials*, DOE/EIS-0220D, March 1995, p. 2-46 (decision criterion language identical to F-Canyon draft EIS); *Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling*, DOE/EIS-0161, Volume I, October 1995, p. S-8 (commercial irradiation services alternative ruled out of draft PEIS based on "nonproliferation concerns"; later incorporated into final PEIS based in part on "further consideration of nonproliferation issues"); *Disposition of Surplus Highly Enriched Uranium Draft Environmental Impact Statement*, DOE/EIS-0240-DS, October 1995, Summary, p. S-7 ("criteria against which to judge potential alternatives" based on President Clinton's 1993 nonproliferation policy and 1994 NAS report on plutonium disposition; "[t]hese criteria included [inter alia] nonproliferation; security ..."). [Back to document](#)
  4. *Spent Fuel Take-Back EIS*, op. cit, pp. 62-63 (costs of alternatives analyzed and compared); *Savannah River Site Waste Management: Draft Environmental Impact Statement*, DOE/EIS-0217D, Volume I, January 1995, p. 2-78 ("A technology had to meet the following criteria to be deemed a potential technology ... (3) Its costs were comparable to other possible technologies"); *Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs: Final Environmental Impact Statement*, DOE/EIS-0203-F, Volume I, Summary, April 1995, p. 37 ("cost of implementation" a decision criterion, and comparative cost analysis integrated into PEIS); *Draft Programmatic Environmental Impact Statement for Stockpile Stewardship and Management*, DOE/EIS-0236, Volume I, February 1996, p. 3-1 ("planning assumptions and basis for analysis" in PEIS include "[m]aximize efficiency and minimize cost and waste consistent with programmatic needs"); *Surplus HEU Disposition Draft EIS*, op. cit, p. S-7 ("cost-effectiveness" among "criteria against which to judge potential alternatives"). [Back to document](#)
  5. DPEIS, Summary, p. S-5. [Back to document](#)
  6. 10 C.F.R. 1021.101; 10 C.F.R. 1021.103. [Back to document](#)
  7. 40 C.F.R. 1502.23 (emphasis added). [Back to document](#)
  8. *National Wildlife Federation v. Marsh*, 568 F.Supp. 985, 997 (D.D.C. 1983). [Back to document](#)
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