

NUCLEAR REGULATORY COMMISSION

[Docket No. 72-26]

**Notice of Availability of Supplement to the Environmental Assessment and
Draft Finding of No Significant Impact for the
Diablo Canyon Independent Spent Fuel Storage Installation**

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Opportunity to Provide Comments.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) is issuing a supplement to the Environmental Assessment (EA) for the Diablo Canyon Independent Spent Fuel Storage Installation (ISFSI) and publishing, for public comment, a draft Finding of No Significant Impact (FONSI). NRC issued the EA and initial FONSI for this action on October 24, 2003, and subsequently issued a license for the Diablo Canyon ISFSI to the Pacific Gas and Electric Company (PG&E), on March 22, 2004. The license authorizes PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the Diablo Canyon Power Plant in an ISFSI at the site for a term of 20 years. NRC is issuing this supplement to the EA and draft FONSI in response to the June 2, 2006, decision by the United States Court of Appeals for the Ninth Circuit, *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006). This supplement to the EA addresses the environmental impacts from potential terrorist acts against the Diablo Canyon ISFSI.

DATES: The public comment period on the draft FONSI closes [insert date 30 days after the date of publication]. Written comments should be submitted as described in the "ADDRESSES" section of this notice. Comments submitted by mail should be postmarked by that date, to ensure consideration. Comments received or postmarked after that date will be considered if it

is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rulemaking, Directives, and Editing Branch, Mail Stop T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Please note Docket No. 72-26 when submitting comments. Comments will also be accepted by e-mail, at NRCREP@nrc.gov or by facsimile to (301) 492-3342, Attention: James R. Hall.

FOR FURTHER INFORMATION, CONTACT: James R. Hall, Senior Project Manager, Licensing Branch, Division of Spent Fuel Storage and Transportation, Mail Stop 6003-3D-02M, U.S. Nuclear Regulatory Commission, Washington, DC, 20555-0001. Telephone: (301) 492-3319; e-mail: jrh@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 21, 2001, PG&E submitted an application to NRC, requesting a site-specific license to build and operate an ISFSI, to be located on the site of the Diablo Canyon Power Plant, in San Luis Obispo County, California. In accordance with the National Environmental Policy Act (NEPA), the NRC staff issued an EA for this action on October 24, 2003, in conformance with NRC requirements specified in 10 CFR 51.21 and 51.30, and the associated guidance in NRC report NUREG-1748, "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs." Based on the EA, NRC also issued a FONSI for this action on October 24, 2003, in accordance with 10 CFR 51.31 and 51.32.

On March 22, 2004, the NRC staff issued Materials License No. SNM-2511 to PG&E, pursuant to 10 CFR Part 72, authorizing PG&E to receive, possess, store, and transfer spent nuclear fuel and associated radioactive materials resulting from the operation of the Diablo Canyon Power Plant in an ISFSI at the site for a term of 20 years. PG&E has begun

construction of the Diablo Canyon ISFSI and currently plans to start transferring spent fuel to the ISFSI in mid-2008.

After NRC's issuance of the license for the Diablo Canyon ISFSI, the San Luis Obispo Mothers for Peace and other parties filed suit in the United States Court of Appeals for the Ninth Circuit, asking that NRC be required to consider terrorist acts in its environmental review associated with this licensing action. In its decision of June 2, 2006, *San Luis Obispo Mothers for Peace v. NRC*, 449 F.3d 1016 (9th Cir. 2006), the Ninth Circuit held that NRC could not categorically refuse to consider the consequences of a terrorist attack under NEPA and remanded the case to NRC.

In response to the Ninth Circuit decision, the Commission issued a Memorandum and Order on February 26, 2007, directing the NRC staff to prepare a revised EA, addressing the likelihood of a terrorist attack at the Diablo Canyon ISFSI site and the potential consequences of such an attack.

The October 24, 2003, EA and FONSI, and the license and supporting documents, are available on NRC's website at: <http://www.nrc.gov/waste.html>, by selecting "Diablo Canyon ISFSI," in the Quick Links box. Copies are also available by contacting James R. Hall, as noted above.

II. Summary of Supplement to the EA for the Diablo Canyon ISFSI

In the supplement to the EA, the NRC staff has considered the potential radiological impacts of terrorist acts on the Diablo Canyon ISFSI. NRC has established requirements and has initiated several actions designed to provide high assurance that a terrorist attack would not lead to a significant radiological event at an ISFSI. These include: (1) NRC's continual evaluation of the threat environment, in coordination with the intelligence and law enforcement communities, which provides, in part, the basis for the protective measures currently required; (2) the protective measures that are in place to reduce the chance of an attack that leads to a

significant release of radiation; (3) the robust design of dry cask storage systems, which provide substantial resistance to penetration; and (4) NRC security assessments of the potential consequences of terrorist attacks against ISFSIs.

The supplement to the EA describes the security measures for ISFSIs and discusses the security assessments performed by NRC, which confirmed that the existing security requirements, imposed by regulations and orders, are adequate to provide high assurance that a terrorist attack on an ISFSI will not lead to significant radiological consequences. Threat scenarios considered in the generic security assessments for ISFSIs included a large aircraft impact similar in magnitude to the attacks of September 11, 2001, and ground assaults using expanded adversary characteristics consistent with the design basis threat for radiological sabotage for nuclear power plants.

The NRC staff compared the assumptions used in the generic ISFSI security assessments to the relevant features of the Diablo Canyon ISFSI. Based on this comparison, the staff determined that the assumptions used in these generic security assessments, regarding the storage cask design, the amount of radioactive material that could be released, and the atmospheric dispersion, were representative, and in some cases, conservative, relative to the actual characteristics for the Diablo Canyon ISFSI. The staff determined that any dose to affected residents nearest to the Diablo Canyon site will tend to be much lower than the doses calculated for the generic assessments. Based on these considerations, the dose to the nearest affected resident, from even the most severe plausible threat scenarios – the ground assault and aircraft impact scenarios discussed above, would likely be below 5 rem. In many scenarios, the hypothetical dose to an individual in the affected population could be substantially less than 5 rem, or none at all.

In the supplement, the NRC staff concludes that the construction, operation, and decommissioning of the Diablo Canyon ISFSI, even when potential terrorist attacks on the facility are considered, will not result in a significant effect on the human environment. NRC

security requirements, imposed through regulations and orders, and implemented through the licensee's security plans, in combination with the design requirements for dry cask storage systems, provide adequate protection against successful terrorist attacks on ISFSIs. Therefore, a terrorist attack that would result in a significant release of radiation affecting the public is not reasonably expected to occur.

The supplement to the EA and draft FONSI are available on NRC's website at: <http://www.nrc.gov/waste.html>, by selecting "Diablo Canyon ISFSI" in the Quick Links box. Copies are also available by contacting James R. Hall, as noted previously.

III. Draft Finding of No Significant Impact

The NRC staff has prepared a supplement to the EA related to the construction and operation of the Diablo Canyon ISFSI, in accordance with the requirements of 10 CFR Part 51. As set forth in the supplement to the EA, NRC has considered the potential for terrorist attacks on the facility, and has determined that the storage of spent nuclear fuel at the Diablo Canyon ISFSI will not have a significant effect on the quality of the human environment, based on the facility design features and the mitigative security measures incorporated as part of the NRC licensing action and in response to NRC security orders. These design features and mitigative security measures will provide high assurance that substantial environmental impacts will be avoided and thereby reduced to a non-significant risk level. Therefore, in accordance with 10 CFR 51.33, NRC has determined that issuance of a draft FONSI is appropriate.

Pursuant to 10 CFR 51.33(e), a final determination to prepare an environmental impact statement or a final FONSI for the proposed action shall not be made until the last day of the public comment period has expired.

IV. Further Information

Documents related to this action, including the supplement to the EA and draft FONSI, the October 24, 2003, EA, and the Diablo Canyon ISFSI license and supporting documentation,

are available electronically, at NRC's Electronic Reading Room, at:

<http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession number for the supplement to the EA and draft FONSI is ML071280256. The ADAMS accession number for the October 24, 2003, EA is ML032970337, and for the ISFSI license and related documents, the accession number is ML040780107. If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact NRC's Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov.

These documents may also be viewed electronically on the public computers located at NRC's PDR, O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents, for a fee.

Dated at Rockville, Maryland this 24th day of May, 2007.

For the Nuclear Regulatory Commission.

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Robert A. Nelson, Chief,
Licensing Branch,
Division of Spent Fuel Storage and Transportation,
Office of Nuclear Material Safety and Safeguards.