

# Blue Ridge Environmental Defense League

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February 10, 2011

Diane Curran  
Harmon Curran Spielberg & Eisenberg  
1726 M Street NW, Suite 600  
Washington, DC 20036

## **Re: Proposed Judicial Appeal of NRC Waste Confidence Rule**

Dear Diane:

On behalf of the Blue Ridge Environmental Defense League, I write to tell you that we would like to participate in the appeal. I believe that in this matter the Nuclear Regulatory Commission is wrong on the law and wrong on the facts. During last five years, the League and its chapters have opposed nuclear reactors in part because there is no place for the high-level nuclear waste produced by them to go. Therefore, I recommended to our Board that we join in this appeal. We understand that there will be no charge to us for this legal case. We are most grateful to the law firm Harmon Curran Spielberg and Eisenberg for including us in this case *pro bono publica*.

Our organization's full name and address:

Blue Ridge Environmental Defense League, Inc.  
226 Hamilton Lane/PO Box 88  
Glendale Springs, NC 28629  
(336) 982-2691  
BREDL@skybest.com

Executive Director: Janet Marsh

Blue Ridge Environmental Defense League has referenced the Waste Confidence Rule in several of our legal interventions in nuclear power plant licenses during the last five years—TVA's Bellefonte, Dominion's North Anna, Duke Energy's Lee and Georgia Power's Vogtle—cases which raised safety or environmental concerns regarding disposal of irradiated reactor fuel. Specifically, we brought the following interventions:

*Esse quam videre*

**Blue Ridge Environmental Defense League Legal Actions**

Date	Docket/s	Type	Applicant	Reactor/s	Site
June 6, 2008	52-014 52-015	COL	Tennessee Valley Authority	Bellefonte Nuclear Power Plant, Units 3 and 4	Hollywood, Alabama
May 9, 2008	52-017	COL	Dominion Virginia Power	North Anna Unit 3	Mineral, Virginia
June 27, 2008	52-018 52-019	COL	Duke Energy Carolinas	William States Lee III Units 1 and 2	Gaffney, South Carolina
December 11, 2006	52-011	ESP	Southern Nuclear Operating Company, Inc	Plant Vogtle Units 3 and 4	Waynesboro, Georgia

For your convenience, I have attached in abbreviated form the relevant actions and contentions which we have brought.

Diane, thank you!



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June 6, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY

	)	
In the Matter of	)	
Tennessee Valley Authority	)	
Bellefonte Nuclear Power Plant	)	Docket Nos. 52-014 and 52-015
Units 3 and 4	)	
Combined License	)	
	)	

**PETITION FOR INTERVENTION AND REQUEST FOR HEARING  
BY THE BELLEFONTE EFFICIENCY AND SUSTAINABILITY TEAM,  
THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE  
AND THE SOUTHERN ALLIANCE FOR CLEAN ENERGY**

**CONTENTION FOURTEEN: Waste Confidence—High Level Nuclear Waste from  
Irradiated Fuel**

**A: Failure to Evaluate Whether and in What Time Frame Spent Fuel Generated by  
Bellefonte Units 3 and 4 Can Be Safely Disposed Of  
Contention**

The Environmental Report for the TVA COLA is deficient because it fails to discuss the environmental implications of the lack of options for permanent disposal of the irradiated (*i.e.*, “spent”) fuel that will be generated by the proposed reactors if built and operated. Nor has the NRC made an assessment on which TVA can rely regarding the degree of assurance now available that radioactive waste generated by the proposed reactors “can be safely disposed of [and] when such disposal or off-site storage will be available.” Final Waste Confidence Decision, 49 Fed. Reg. 34,658 (August 31, 1984), citing *State of Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979). Accordingly, the ER fails to provide a sufficient discussion of the environmental impacts of the proposed new nuclear reactors.

May 9, 2008

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY

_____	)	
In the Matter of	)	
Dominion Virginia Power	)	
North Anna Unit 3	)	Docket Nos. 52-017
Combined License	)	
_____	)	

**PETITION FOR INTERVENTION AND REQUEST FOR HEARING**  
**BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE**  
**CONTENTION SEVEN: Failure to Evaluate Whether and in What Time Frame**  
**Spent Fuel Generated by Unit 3 Can Be Safely Disposed Of**

The Environmental Report for the Dominion COLA is deficient because it fails to discuss the environmental implications of the lack of options for permanent disposal of the irradiated (*i.e.*, “spent”) fuel that will be generated by the proposed reactors if built and operated. Nor has the NRC made an assessment on which DVP can rely regarding the degree of assurance now available that radioactive waste generated by the proposed reactors “can be safely disposed of [and] when such disposal or off-site storage will be available.” Final Waste Confidence Decision, 49 Fed. Reg. 34,658 (August 31, 1984), citing *State of Minnesota v. NRC*, 602 F.2d 412 (D.C. Cir. 1979). Accordingly, the ER fails to provide a sufficient discussion of the environmental impacts of the proposed new nuclear reactors.

The ER for the proposed new reactors does not contain any discussion of the environmental implications of the lack of options for permanent disposal of the irradiated fuel to be generated by North Anna site. Therefore, it is fatally deficient. *State of Minnesota v. NRC*, 602 F.2d at 416-17.

June 27, 2008

UNITED STATES OF AMERICA  
 NUCLEAR REGULATORY COMMISSION  
 BEFORE THE SECRETARY

_____	)	
In the Matter of	)	
Duke Energy Carolinas	)	
Combined License Application	)	Dockets No. 52-018, 52-019
For William States Lee III Units 1 and 2	)	
_____	)	

**PETITION FOR INTERVENTION AND REQUEST FOR HEARING  
 BY THE BLUE RIDGE ENVIRONMENTAL DEFENSE LEAGUE**

**CONTENTION TEN:**

**Contention A: Failure to Evaluate Whether and in What Time Frame Spent Fuel Generated by WS Lee Units 1 and 2 Can Be Safely Disposed Of**

The ER for the proposed new reactors does not contain any discussion of the environmental implications of the lack of options for permanent disposal of the irradiated fuel to be generated by the WS Lee site. Therefore, it is fatally deficient. *State of Minnesota v. NRC*, 602 F.2d at 416-17.

**Contention B. Even if the Waste Confidence Decision Applies to This Proceeding, It Should be Reconsidered.**

Even if the Waste Confidence Decision applies to this proceeding, it should be reconsidered, in light of significant and pertinent unexpected events that raise substantial doubt about its continuing validity, *i.e.*, the increased threat of terrorist attacks against U.S. facilities.

December 11, 2006

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION  
BEFORE THE SECRETARY

In the Matter of	)	
	)	Docket No. 52-011
Southern Nuclear Operating Company, Inc.	)	
	)	
Early Site Permit for Plant Vogtle ESP Site	)	
	)	

**PETITION FOR INTERVENTION**

**I. INTRODUCTION**

Pursuant to 10 C.F.R. § 2.309, 10 C.F.R. § 52.21, and a notice published by the Nuclear Regulatory Commission (“NRC” or “Commission”) at 71 Fed. Reg. 60,195 (October 12, 2006), Petitioners Center for a Sustainable Coast, Savannah Riverkeeper, Southern Alliance for Clean Energy (“SACE”), Atlanta Women’s Action for New Directions (“WAND”), and Blue Ridge Environmental Defense League (“BREDL”), hereby submit their contentions regarding Southern Nuclear Operating Company, Inc. (“SNC”) application for an Early Site Permit (“ESP”).

**Contention 3 : Failure to Evaluate Whether and in What Time Frame Spent Fuel Generated by Proposed Reactors Can Be Safely Disposed Of**

The ER for the Vogtle ESP is deficient because it fails to discuss the environmental implications of the substantial likelihood that spent fuel generated by the new reactors will have to be stored at the Vogtle site for more than 30 years after the reactors cease to operate, and perhaps indefinitely. The Waste Confidence Decision<sup>1</sup> does not support SNC’s failure to address this issue in the ER, because it has been outdated by changed circumstances and new and significant information. As required NEPA, the NRC may not permit construction or operation of the new Vogtle reactors unless and until it has taken into account these changed circumstances and new and significant information. 10 C.F.R. § 51.92. *See also Marsh v. Oregon Natural Resources Council*, 490 U.S. 360 (1989).

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<sup>1</sup> Waste Confidence Review, 55 Fed. Reg. 38,474, 38,504 (September 18, 1990), as amended by Waste Confidence Decision Review: Status, 64 Fed. Reg. 68,005 (December 6, 1999).