

DOCKET NUMBER

PETITION FILE PRM 30-64
(65FR 49207)

NEI

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NUCLEAR ENERGY INSTITUTE

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OFFICE OF THE DIRECTOR
REGULATORY AND SAFETY
ADJUDICATIONS STAFF

October 25, 2000

Ms. Annette L. Vietti-Cook
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

ATTENTION: Rulemakings and Adjudications Staff

REFERENCE: Request for Comments on "Charles T. Gallagher, Gammatron, Inc. Petition for Rulemaking" Docket No. PRM-30-64, Modification of the regulations governing financial assurance and recordkeeping for decommissioning, 65 Fed. Reg. 49207 (August 11, 2000)

Dear Ms. Vietti-Cook:

The Nuclear Energy Institute (NEI),¹ is submitting the following comments on Petition for Rulemaking (Docket No. PRM-30-64) submitted by Charles T. Gallagher, Gammatron, Inc. This petition seeks amendment of the regulations governing financial assurance and recordkeeping for decommissioning, expansion of the method for accumulation of decommission funding, and exemption of licensees whose materials are categorized as greater than Class C waste. The basis of the petition is that Agreement State licensees were not given adequate opportunity to comment on the original NRC proposed rules for financial assurance requirements. The petitioner contends that Agreement State licensees, who account for 75% of radioactive material licenses, had insufficient opportunity to comment on and understand the impacts of proposed rules for financial assurance. The petitioner believes that requiring financial security based on the type and quantities of licensed material is inappropriate and that no facility should be excused from

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

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having a decommissioning fund. The petition would permit businesses to accumulate decommissioning funds over the life of the facility rather than requiring the posting of a bond or guarantee prior to receipt of its license. Finally, the petition requests that facilities handling greater than Class C waste be exempted from decommissioning funding requirement. NEI has reviewed the petition and does not support the petitioner's claims.

NEI takes issue with the petitioner's claim that Agreement States and their licensees had insufficient opportunity to comment on and to understand the proposed rules for financial assurance requirements. While we understand the difficulties of keeping abreast of changing regulations and monitoring regulations published for comment, failure to do so does not constitute an acceptable excuse for seeking a change in regulations or from complying with them. In this particular case, the regulated community was given the opportunity to put in place the funding prior to its next license renewal or at the time of license application. Therefore, the facility had ample time to prepare for the funding requirement.

NEI does not support the petitioner's claim for all facilities to have decommissioning funds regardless of the quantity of licensed material the licensee may possess. A facility that handles sealed sources or small quantities of short-lived materials should not be required to maintain a decommissioning fund. Similarly, high school physics labs and small institutions should not be required to tie up capital as financing assurance that could be used for better purposes.

Current regulations do not prohibit a licensee from accumulating funds during the life of the facility. The licensee could initially post a bond and then retire it as decommissioning funds accumulate during the years of facility operation.

NEI disagrees with the petitioner's final point that licensees who possess radioactive material greater than Class C waste be exempted from financial assurance decommissioning requirements. The disposal of the waste is only one part of the decommissioning. The licensee must have the funding to clean the site and package the waste for disposal. Although there currently is no commercial waste facility that will accept greater than Class C waste, DOE will accept the waste if the facility is closing and there is neither an alternative for storage nor other facility that can accept the waste for storage or use.

In summary, we recommend that the NRC reject the petition in its entirety. We do not agree with the petitioner's recommendations that all licensees must have a decommissioning fund, that they can not accumulate decommissioning funds during operations and that licensees who handle radioactive materials, classified as greater than Class C waste, be exempted from the decommissioning fund requirements. The current decommissioning funding requirements are adequate and should not be revised.

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We would be pleased to discuss these comments and to respond to any questions the NRC may have.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Felix M. Killar, Jr.', written in dark ink.

Felix M. Killar, Jr.