

May 15, 2001

Alan Nelson
Senior Project Manager
Nuclear Energy Institute
Suite 400
1776 I Street, NW
Washington, DC 20006-3708

SUBJECT: RESPONSE TO INQUIRY ON 10 CFR PART 72 GENERAL LICENSEE
REPORTABILITY REQUIREMENTS

Dear Mr. Nelson:

I am writing in response to a question you asked me at a public meeting between the U.S. Nuclear Regulatory Commission (NRC) and the Nuclear Energy Institute in November 2000, and subsequent telephone conversations between you and members of the Spent Fuel Project Office (SFPO) staff in February and April 2001. Your question related to a 10 CFR Part 72 general licensee's responsibility to report certain events and conditions at an independent spent fuel storage installation (ISFSI). Your question was asked in the context of a pending rule change (effective January 23, 2001) that would delete the current reporting requirements of 10 CFR 50.72(b)(2)(vii)(A) and (B) as well as 10 CFR 72.216(a) and (b), and would modify the requirements in 10 CFR 72.216(c) [see FEDERAL REGISTER notice 65 FR 63789, dated October 25, 2000].

Because this final rule removed provisions for reporting certain spent fuel storage cask events and conditions under Part 50, you asked, "When is an ISFSI general license required to report events and conditions under 10 CFR 72.216(c)?" In other words, when is an ISFSI general license considered "active" for reporting events and conditions under Part 72? You provided a hypothetical example involving a Part 50 licensee with unused spent fuel storage casks on-site, no ISFSI in operation, and the discovery of a defect in one of the unused storage casks. You asked, "Would this cask defect be reportable to the NRC under 10 CFR 72.216(c)?" Prior to the rule change, the defect would have been reported under 10 CFR 50.72(b)(2)(vii)(A).

The SFPO staff has completed its review of your question. The staff's position on this issue is that a general licensee is required to report events and conditions to the NRC [in accordance with 10 CFR 72.216] subsequent to the licensee's commencing storage of spent fuel on the ISFSI pad. Hence, in your example, a general licensee is not required to report the defect [in an unused cask] under 10 CFR 72.216(c), because spent fuel has not yet been stored on the ISFSI pad. Nevertheless, under 10 CFR Part 21 a director or responsible officer of a general licensee would be required to notify the NRC, if the defect constituted a "substantial safety hazard." Moreover, because the licensee would have procured the cask under a quality assurance (QA) program that meets the NRC's QA regulations in 10 CFR Part 72, Subpart G, the licensee would be required to document, evaluate, and disposition the defect in accordance with its NRC-approved QA program.

A. Nelson

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Based upon its review of your question, staff believes that additional clarifying language is warranted for the event reporting regulations in 10 CFR 72.75. Specifically, staff proposes clarifying when a general licensee is required to begin reporting events and conditions under this regulation. Staff has developed a rulemaking plan to address this and other issues in 10 CFR 72.75 and on April 18, 2001, the Commission, in a Staff Requirements Memorandum to SECY-01-0054, directed staff to implement the proposed rulemaking plan.

I trust this information responds to your question. If you have further concerns on this issue, please contact me or Mr. Robert Temps, of my staff, at (301) 415-2552.

Sincerely,

/RA/

E. William Brach, Director
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

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Sincerely,

(Original Signed by:)

E. William Brach, Director
Spent Fuel Project Office
Office of Nuclear Material Safety
and Safeguards

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