RULEMAKING ISSUE
AFFIRMATION

June 1, 2001 SECY-01-0097

FOR: The Commissioners

FROM: William D. Travers
Executive Director for Operations

SUBJECT: FINAL RULE: INTERIM STORAGE FOR GREATER THAN CLASS C WASTE

PURPOSE:

To request Commission approval to publish the final rule, in the Federal Register, that would amend 10 CFR Parts 30, 70, 72, and 150. The amendments would allow licensing for interim storage of power reactor-related greater than class C (GTCC) waste in a manner that is consistent with licensing the interim storage of spent fuel and would maintain Federal jurisdiction over the interim storage of reactor-related GTCC waste either on or off the reactor site. These amendments provide an option that would simplify and clarify the licensing process and reduce the potential burden on licensees, the U.S. Nuclear Regulatory Commission (NRC), and Agreement States, with no adverse effect on public health and safety, or the environment.

BACKGROUND:

The amendments respond to a petition for rulemaking (PRM-72-2) submitted by Portland General Electric Company. The amendments would grant the petition in part (allow reactor-related GTCC waste to be licensed under Part 72) and deny the petition in part (not changing the definition of spent fuel to include GTCC waste) by amending NRC's regulations governing the interim storage of reactor-related GTCC waste. NRC received six favorable comments in support of the petition. The staff developed a draft rulemaking plan that was provided to the Commission and to the Agreement States (SECY-97-056, dated March 5, 1997). The Office of the General Counsel submitted additional views to the Commission. In response to the Staff Requirements Memorandum (SRM) dated March 12, 1999, the staff transmitted the proposed

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rule in SECY-00-0021, "Proposed Rule: Interim Storage for Greater than Class C Waste," dated January 27, 2000. In the SRM dated April 25, 2000, the Commission approved publication, with modifications, of the proposed rule. The proposed rule was published on June 16, 2000 (65 FR 37712). NRC also submitted a letter to the U. S. Department of Energy (DOE), dated June 16, 2000, requesting specific guidance on the advisability of allowing GTCC waste and spent fuel to be commingled in a single container. NRC also requested comments on this, and other issues, in the proposed rule.

Eighteen comment letters were received: Five were from Agreement States (South Carolina, Illinois, Utah, New York, and Maine); 10 from industry (including the Portland General Electric Company, the petitioner, and the Nuclear Energy Institute); one from DOE; one from a private citizen; and one from a consulting firm.

In general, none of the commenters was opposed to the idea of storing reactor-related GTCC waste within an Independent Spent Fuel Storage Installation (ISFSI) licensed under the provisions of 10 CFR Part 72. However, four of the Agreement State commenters were opposed to restricting the licensing authority solely to NRC and believe NRC is not correctly interpreting the Atomic Energy Act. Utah is very concerned about "away-from-reactor ISFSIs," and believes that storage of GTCC waste should be restricted to at-reactor ISFSIs unless and until decisive plans have been made for permanent disposal of GTCC waste. South Carolina and New York believe NRC and States can effectively collaborate in the regulation of a single facility. Maine believes the rulemaking should be reconsidered because it is not advisable to allow the commingling of spent fuel and GTCC waste. The industry, DOE, the private citizen, and the consulting firm all generally supported the rulemaking, and some provided specific recommendations that the staff incorporated into the final rule. DOE also noted its concern that canisters of commingled GTCC waste and spent fuel may need to be opened by the waste owner or generator prior to disposal.

DISCUSSION:

Current NRC regulations are not clear on the acceptability of storing GTCC waste co-located (at the same location but in separate containers) with spent fuel at an ISFSI or a Monitored Retrievable Storage Installation (MRS). This situation has created confusion and uncertainty among decommissioning reactor licensees and may create inefficiency and inconsistency in the way NRC handles GTCC waste licensing matters.

The Low-Level Radioactive Waste Policy Amendments Act of 1985 gave the Federal Government (DOE) the primary responsibility for developing a national strategy for disposal of GTCC waste. The Act gave NRC the licensing responsibility for a disposal facility for GTCC waste. GTCC waste is not generally acceptable for near-surface disposal at licensed low-level waste (LLW) disposal facilities. There currently are no routine disposal options for GTCC waste.

In developing the rule, the staff was cognizant of both potential DOE disposal criteria for GTCC waste, to preclude allowing a storage option that is unacceptable for disposal, and potential adverse interactions between spent fuel and various types of GTCC waste. The staff believes that properly addressing potential adverse conditions from commingling spent fuel with certain types of GTCC waste presents significant safety and technical issues. In addition, because DOE has not yet identified criteria for a disposal package, the staff is concerned that storage of

GTCC waste and spent fuel in the same container may be unacceptable for placement in the geologic repository. Therefore, the rule precludes the commingling of GTCC waste and spent fuel, except on a case-by-case basis. Note that this in no way changes the current NRC and industry practice of allowing the commingling of spent fuel and certain specific components associated with, and integral to, spent fuel (e.g., burnable poison rod assemblies, control rod elements, and thimble plugs). In support of this rulemaking, the staff is developing Interim Staff Guidance for NRC staff and licensee use in utilizing Part 72 storage criteria for various GTCC waste types.

Currently, utilities store all types of radioactive materials under their 10 CFR Part 50 “Domestic Licensing of Production and Utilization Facilities” licenses, including material that, when finally disposed of, would be classified as GTCC waste. The GTCC waste is typically stored within the reactor vessel, in the spent fuel pool, or in a radioactive material storage area, pending development of a suitable permanent disposal facility.

Under current regulations, a reactor licensee seeking decommissioned status would need to apply for and be granted a specific Part 30 and/or a Part 70 license, to store GTCC waste, before termination of its Part 50 license. At present, Part 72 only provides for licensing the storage of spent fuel at an ISFSI and storage of spent fuel and solid high-level radioactive waste at an MRS. Nonetheless, a reactor licensee could elect to store GTCC waste in a facility co-located at an ISFSI site using a license(s) issued under Parts 30 and/or 70.

Under an alternative interpretation of NRC regulations - which this final rule rejects - storage of GTCC waste at an ISFSI (or an MRS) after termination of a reactor licensed under Part 50 could lead to a situation in which NRC regulates the spent fuel at an ISFSI while an Agreement State regulates GTCC waste at the same location. NRC has exclusive regulatory authority over a reactor licensee's storage of spent fuel and of GTCC waste during operations. Under the alternative interpretation since GTCC waste is considered a type of LLW, Agreement States would have licensing authority for any GTCC waste possessed by a utility when the Part 50 license is terminated. Thus, a reactor licensee would have to apply for and receive an Agreement State license (equivalent to an NRC Part 30 or 70 license), to store the GTCC waste, for NRC to terminate the Part 50 license.

The staff's current understanding of the industry's approach to reactor decommissioning indicates that many reactor licensees currently undergoing decommissioning, as well as those considering future plans for decommissioning, may or may not pursue early termination of their Part 50 license, for a variety of reasons. Consequently, with retention of the Part 50 license, licensees will also retain the Part 72 general license and their incorporated Parts 30/70 licenses (i.e., the authority to store reactor-related GTCC waste under the Part 50 license).

However, the staff believes that some licensees may wish to have the option of early termination of their Part 50 licenses (and thus Part 72 general licenses). In that case, this rule allows storage of reactor-related GTCC waste either under a Part 72 specific license or under Parts 30 and/or 70. The staff believes that storing reactor-related GTCC waste under a Part 72 specific license or under Parts 30 and 70 both provide an adequate level of protection of public health and safety. Accordingly, issuing the final rule would provide reactor licensees with flexibility in selecting a regulatory approach to storing reactor-related GTCC waste after termination of their Part 50 license.

This rule does not eliminate the current availability of storing GTCC waste under the authority of an NRC Part 30 or 70 license. Neither Parts 30 nor 70 include explicit criteria for storage of GTCC waste. Therefore, a licensing process conducted under these regulations would be more complicated and resource-intensive because the licensee would need to develop new proposed storage criteria, and NRC would then need to review and approve these criteria within the licensing process. The licensing process will be simpler with less regulatory burden if all the radioactive waste to be stored at an ISFSI or an MRS is stored under the authority of one Part 72 license. Part 72 was developed specifically for storage of spent fuel at an ISFSI and spent fuel and high-level waste at an MRS. Appropriate Part 72 criteria will be applied to GTCC waste storage. Also, using Part 72 to store reactor-related GTCC waste would eliminate the need for multiple licenses for the storage of spent fuel and GTCC waste.

The changes to Parts 30, 70, 72, and 150 are necessary to allow the storage of NRC-licensed reactor-related GTCC waste under a specific Part 72 license within an ISFSI or an MRS and to clarify that the licensing responsibility for this waste remains under Federal jurisdiction. Because GTCC waste at reactor facilities is under Federal jurisdiction during the operating life of the plant and the ultimate disposal of such GTCC waste is also under Federal jurisdiction, the period between termination of a reactor license and ultimate disposal should also remain under Federal jurisdiction. A regulatory scheme which allows for Federal jurisdiction, followed by State jurisdiction, followed again by Federal jurisdiction over the generation, interim storage, and disposal of GTCC waste, respectively, is an inefficient approach, in that NRC and an Agreement State would both spend resources licensing and inspecting an ISFSI that stores both spent fuel and GTCC waste. Therefore, for efficiency and consistency of licensing, Part 72 should be modified to allow storage of GTCC waste within these facilities exclusively under NRC's jurisdiction. Changes to Part 150 are needed to clarify that reactor-related GTCC waste, licensed under either Parts 30, 70, or 72, remain under Federal jurisdiction.

This final rule does not affect the strategic goal of protection of the public health and safety and the environment. This rule could achieve the strategic goals of reducing unnecessary regulatory burden on stakeholders and increasing effectiveness, efficiency, and realism. The rule would simplify and clarify the licensing process and reduce the potential burden on licensees, NRC, and Agreement States. No comments were received on the proposed rule from members of the public not associated with States or the nuclear industry.

AGREEMENT STATE ISSUES:

This rulemaking will change NRC's current policy regarding the regulation of a specific kind of LLW after termination of a Part 50 license. Under current interpretation, after termination of the Part 50 license, licensing the storage of all LLW, including GTCC waste, is the responsibility of an Agreement State, if the storage facility is located in an Agreement State. Under this rule, licensing the storage of reactor-related GTCC waste will be reserved to NRC, regardless of location. The Federal Register notice for the proposed rule specifically discussed this point and asked for Agreement State comments.

COORDINATION:

The Office of the General Counsel has no legal objection to this rulemaking. The Office of the Chief Financial Officer has reviewed this Commission Paper for resource implications and has no objections. The rule makes changes to the information collection requirements that will be approved by the Office of Management and Budget (OMB) before forwarding the rule to the Federal Register for publication.

RECOMMENDATIONS:

That the Commission:

1. Approve for publication, in the Federal Register, the amendments to Parts 30, 70, 72, and 150 on interim storage of GTCC waste (Attachment 1).

2. Certify that the final rule does not have a significant financial impact on a substantial number of small entities. This certification is included in the attached Federal Register notice.

3. Note:

   a. That the Chief Counsel for Advocacy of the Small Business Administration will be informed of the certification and the reasons for it, as required by the Regulatory Flexibility Act, 5 U.S.C. 605(b).

   b. That a final Regulatory Analysis has been prepared for this rulemaking (Attachment 2).

   c. That a final Environmental Assessment has been prepared for this rulemaking (Attachment 3).

   d. That the staff has determined that this is not a "major" rule, as defined in the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804(2), and has confirmed this determination with OMB. The appropriate Congressional and General Accounting Office contacts will be informed.

   e. That appropriate Congressional committees will be informed of this action.

f. That a press release will be issued by the Office of Public Affairs when the rulemaking is filed with the Office of the Federal Register.

g. OMB approval will be obtained before the rule is submitted to the Office of the Federal Register for publication.

/RA/

William D. Travers
Executive Director
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Attachments:
1. Federal Register notice
2. Regulatory Analysis
3. Environmental Assessment
4. Public Comments on the Proposed Rule

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RECORD NOTE: A draft copy of the rule was sent to OIG for information on January 30, 2001.

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