

July 26, 2001

MEMORANDUM TO: Stephen D. Dingbaum
Assistant Inspector General for Audits
Office of the Inspector General

FROM: Carl J. Paperiello */RA by Ashok C. Thadani Acting For/*
Deputy Executive Director for Materials,
Research, and State Programs

SUBJECT: RESPONSE TO OIG AUDIT REPORT ON "REVIEW OF NRC'S DRY
CASK STORAGE PROGRAM" (OIG-01-A-11)

I am responding to your June 20, 2001, memorandum transmitting the audit report on "Review of NRC's Dry Cask Storage Program" (OIG-01-A-11). I am pleased to note your conclusion that the Nuclear Regulatory Commission's (NRC's) program for the storage of spent nuclear fuel in dry storage casks has met Congress' intent, as mandated by the *Nuclear Waste Policy Act of 1982*. With respect to your specific recommendations, I submit the following:

Recommendation 1

Revise the *NRC Regulations Handbook* to recommend the use of the direct final rule for new [spent fuel storage] cask certifications.

Response

Agree. Please note that the *Handbook* already provides that the direct final rule process may be used for any type of rulemaking under appropriate circumstances. The Commission has previously provided guidance to the staff on the use of the direct final rule process for new CoC rulemakings (see Staff Requirements Memorandum on SECY-98-188, dated September 3, 1998). The NRC's Rulemaking Coordinating Committee (RCC), which includes staffs from the Offices of Administration (ADM); Nuclear Material Safety and Safeguards (NMSS); Nuclear Reactor Regulation (NRR); and General Counsel (OGC), will review potential changes to the *Handbook* to clarify that evaluation of the use of the direct final rule process should be performed, when appropriate, for new 10 CFR Part 72 Certificate of Compliance (CoC) rulemakings. ADM will incorporate appropriate changes in the next revision of the *Handbook*.

Recommendation 2

Revise the *NRC Regulations Handbook* to clarify the definition of "noncontroversial" as it pertains to the use of the direct final rule.

CONTACT: Philip Brochman, NMSS/SFPO
(301) 415-8592

Response

Agree. OGC is researching the current federal usage of the term “noncontroversial” as it pertains to direct final rules and will present its findings for review by the RCC. ADM will incorporate appropriate changes in the next revision of the *Handbook*.

Recommendation 3

Publish the criteria for significant adverse comments in each direct final rule package.

Response

Agree. NMSS staff has prepared revisions for the language used in the "templates" for CoC-amendment direct final rule *Federal Register* notices so as to include the criteria for a significant adverse comment. NMSS will use these revisions for the next CoC direct final rule to be published (i.e., the NAC-MPC CoC No. 1025, Amendment No. 1 rulemaking) and will add this language, or other language based on further revisions to the *Handbook*, to future direct final rules.

Response

Agree. OGC is researching the current federal usage of the term “noncontroversial” as it pertains to direct final rules and will present its findings for review by the RCC. ADM will incorporate appropriate changes in the next revision of the *Handbook*.

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