

September 7, 2001

MEMORANDUM TO: Larry W. Camper, Chief
Decommissioning Branch, DWM/NMSS

FROM: Robert A. Nelson, Chief
Facilities Decommissioning Section /RA/
Decommissioning Branch, DWM/NMSS

SUBJECT: RESOLUTION OF FINDINGS FROM YEAR 2000 ANNUAL
EVALUATION OF THE DECOMMISSIONING FINANCIAL
ASSURANCE INSTRUMENT SECURITY PROGRAM AND
INVENTORY

This memo reports the resolution of findings listed in the year 2000 annual evaluation of the decommissioning financial assurance instrument (FAI) security program and inventory. The results of the year 2000 evaluation were documented in a memo dated April 11, 2001. The evaluation was performed in accordance with Management Directive (MD) 8.12, "Decommissioning Financial Assurance Instrument Security Program." The evaluation noted one apparent deficiency that had not been resolved at the time the evaluation was completed, and reported on the anticipated completion of tasks planned for the FAI program.

The unresolved deficiency was that the file for Nuclear Fuel Services did not contain the original financial instrument for an escrow account listed in the License Tracking System (LTS). The staff determined that the LTS should be updated to remove the escrow account from the listing.

The staff considered a revision to MD 8.12, suggested by Region III, to reduce the number of evaluations of the FAI program from two to one per year. The staff determined that the FAI files should continue to receive reviews twice annually to assure they are kept current.

The staff issued a new procedure, DCB OP 011, "Financial Assurance Instrument Maintenance and Review," which provides administrative procedures to implement MD 8.12.

The biennial audit of the NMSS FAI program by NRR has been scheduled for the third week in September 2001.

Details of the items outlined above are attached.

Attachment: Resolution of Findings
Contact: Thomas L. Fredrichs, NMSS/DWM/DCB
(301) 415-5971

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**RESOLUTION OF FINDINGS
YEAR 2000 EVALUATION OF THE
FINANCIAL ASSURANCE INSTRUMENT SECURITY PROGRAM**

1. The original, signed instrument for an escrow account for Nuclear Fuel Services (NFS) listed in the License Tracking System (LTS) was not present in the FAI file.

The LTS listed an escrow account for \$750,000, issued by NFS and approved on March 3, 1991. However, the original, signed documents were not held in the safe for FAI maintained by DWM. The staff reconstructed the history of the escrow account to determine what action to take in response to the apparent deficiency noted above. Based on the regulatory history, it appears the original escrow document was not required to be submitted, and that the licensee did not do so. Therefore, an original, signed duplicate of the escrow is not required to be held in the FAI safe. Details of the staff's investigation are discussed below.

The date in the LTS referred to Amendment 61 to the NFS license, issued March 3, 1991, which amended the financial assurance arrangements for decommissioning specified in License Condition 50. At the time the amendment was issued, NFS had the option to submit either a decommissioning funding plan or a certification of financial assurance for decommissioning. This option was available under the Decommissioning Rule issued in 1988, because the NFS license was issued before July 27, 1990. NFS was entitled to use this option until such time as its license was renewed. Upon license renewal, 10 CFR 70.25 required the licensee to submit a decommissioning funding plan (DFP), including a decommissioning cost estimate, and originally signed duplicates of financial instruments obtained to cover the cost.

Because the NFS license was not renewed when Amendment 61 was issued, the licensee exercised its option to provide a certification of financial assurance, rather than a DFP and original financial assurance documents. The staff recognized and approved that action, stating in its transmittal letter, dated March 26, 1991, that "... the existing escrow fund satisfies the requirements of 10 CFR 70.25 for a certification of financial assurance for decommissioning." Accordingly, the licensee was not required to submit the original documents for the escrow fund, and, in fact, did not submit them. However, the escrow fund was listed in the LTS as the financial assurance mechanism used by the licensee.

The NFS license was renewed on June 9, 1992. The license was completely rewritten, and License Condition 50, which required the escrow fund as a certification, was eliminated. Subsequently, financial assurance requirements were incorporated by reference in Safety Condition S-1, which listed correspondence that described the DOE contract provisions for decommissioning costs associated with naval fuel.

However, the licensee did not submit any original, signed financial instruments to cover the costs of decommissioning when its license was renewed in 1992. Instead, it requested an exemption from the regulatory requirements to make such a submission. NFS offered a statement of intent by the Department of Energy (DOE) to pay for the expenses incurred in decommissioning NFS' facilities as required by its NRC license, in lieu of using one of the financial mechanisms listed in 10 CFR 70.25(e). The statement of intent was included in clause

H.015 of the NFS contract to produce fuel for naval reactors, and it has no upper limit to the government's liability for costs. However, under clause H.014 of the contract, DOE authorized NFS to retain up to \$5,000,000 in its decommissioning escrow, "as a revolving account" for decommissioning work. Under clause H.015 of the contract, the escrow must be depleted before DOE will pay the remaining costs. The escrow account relied upon by DOE was the same as that required under Condition 50 of the previous NRC license. In the Safety Evaluation Report issued with the 1992 license renewal, the staff granted the requested exemption to 10 CFR 70.25 and accepted the DOE contract clause as financial assurance for decommissioning. Therefore, at the time of the 1992 license renewal, no original, signed financial instruments were submitted to the NRC with respect to the escrow.

By letter dated May 25, 1993, NFS requested that NRC provide "final release" of the escrow fund. At the time, the escrow held about \$10.2 million. NFS proposed to withdraw \$5.2 million to pay for its uranium decommissioning project in 1993. The remaining \$5 million would be held in escrow in accordance with the DOE contract. By letter dated June 25, 1993, NRC approved spending "all monies now in the NFS Decommissioning Escrow Fund, including the \$5,000,000 that will be spent in accordance with clause H.014" of the DOE contract. Therefore, NFS was no longer required to hold the escrow account as financial assurance for compliance with NRC regulations. In effect, it had been replaced by the DOE statement of intent.

On July 2, 1999, the NFS license was renewed a second time. The Safety Evaluation Report (SER) accepted the DOE contract as adequate funding for decommissioning activities associated with the manufacture of naval reactor fuel. A list of escrow accounts that were active at the time of renewal was included in the SER. However, no mention was made of the escrow fund referenced within the DOE contract.

In view of the above, the staff concluded that the original escrow document was either not required to be submitted, or was exempted from submission, depending on which license condition applied at the time. Consequently, the escrow document was not submitted, and was never placed in the FAI security safe. The staff further concluded that the reference in the LTS to the escrow account for \$750,000, issued by NFS and approved on March 3, 1991 is now obsolete, due to the license conditions for financial assurance issued with the 1999 renewal of the NFS license. Accordingly, the listing was removed from the LTS.

2. Revision to MD 8.12 to reduce the number of evaluations of the FAI security and inventory program from two to one per year is under consideration.

Region III, based on its experience with the FAI security and inventory program, requested that MD 8.12 be revised to reduce the number of evaluations of the FAI security and inventory program from two to one per year. Their request was motivated partly by the desire to save resources, and partly because their experience suggested that a single annual check would be sufficient to maintain the integrity and accuracy of the files.

However, results of evaluations of the FAI programs in other Regions and Headquarters indicated that a twice annual inventory evaluation would improve the accuracy of the files and prompt the staff to assure timely placement of original, signed financial documents into the appropriate security safes. Therefore, the staff decided to maintain the twice yearly checks, and MD 8.12 will not be revised at this time.

3. The staff plans to a new procedure to standardize processing of FAI.

In order to capture good practices, the staff issued DCB OP 011, "Financial Assurance Instrument Maintenance and Review," to standardize administrative procedures for processing FAI. The procedure provides direction on receipt, processing, storage, and return of financial assurance instruments received from licensees to provide adequate assurance that funds will be available for decommissioning.

4. The staff plans to schedule an audit of the NMSS financial assurance program by NRR in the third quarter of 2001.

The audit is scheduled for the third week of September, 2001.