

DOCKETED  
USNRC

November 20, 2001 (2:29PM)

DOCKET NUMBER  
PROPOSED RULE PR 2,20+50  
(66 FR 46230)OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFFJames W. Davis  
DIRECTOR, OPERATIONS  
NUCLEAR GENERATION DIVISION

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November 19, 2000

Secretary  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001**ATTENTION:** Rulemakings and Adjudication's Staff**SUBJECT:** Industry Comments in Support of Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan."

The Nuclear Energy Institute (NEI)<sup>1</sup> appreciates the opportunity to provide comments on behalf of the nuclear industry on the proposed rule for partial site release. As proposed, the rulemaking would allow power reactors to release portions of their sites prior to the submittal of a license termination plan. Recent industry experience with decommissioning power reactors indicates that this rule will provide real value to the reactor licensee and the host community. In addition, operating reactor facilities and their host communities will have the option to effectively use property, which does not directly support plant operations. Industry supports this needed regulatory action.

The intent of the proposed rule is clear. It appropriately establishes the radiological release criteria for unrestricted use found in 10 CFR 20 Subpart E as the criteria for a partial site release. The proposed rule also makes it clear that the entire site as defined in the original (or amended) license is subject to the License Termination Rule (LTR).

However, a conflict between the definition of "site boundary" in 10 CFR 20.1003 and the stated intent of the proposed rule could be interpreted in a way that would preclude the implementation of the rule. A literal interpretation of the 10 CFR 20.1003 definition of "site boundary" is in conflict with existing decommissioning guidance<sup>2</sup> NUREG-1221, Decommissioning Criteria for Nuclear Facilities, G.22, "Definition of Site" (1988); NRC Regulatory Issue Summary 2000-19, October 24, 2000; and 66 FR 46230 (2001)

<sup>1</sup> NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including regulatory aspects of generic operational and technical issues. NEI 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.

<sup>2</sup> NUREG-1221, Decommissioning Criteria for Nuclear Facilities, G.22, "Definition of Site" (1988); NRC Regulatory Issue Summary 2000-19, October 24, 2000; and 66 FR 46230 (2001)

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2, and the NRC guidance<sup>3</sup> historically used by most reactor licensees when they applied for their construction permits or operating licenses. This guidance defined the "site" as the contiguous real estate where licenses have the legal right to control access **for the purposes of limiting public dose** (emphasis added). Finally, the definition of "site boundary" in 10 CFR 20.1003 is a conflict for those Part 50 licensees who have their site defined in their license and who own, lease, or otherwise control land beyond that defined line.

It is clear that the NRC always intended to regulate the "licensed activities" associated with site. The fact that a licensee may own or acquire extensive contiguous land for purposes completely unrelated to the licensed activity should not subject those properties to NRC regulatory requirements. In practical terms the LTR should apply to all properties directly associated with the use of licensed materials. Included are those properties used for the purpose of receiving, possessing, or using licensed materials

NEI recommends that the NRC resolve this conflict in the site boundary definition. Several alternatives are available and two are identified below: A direct approach is to amend the 10 CFR 20.1003 definition of "site boundary" to read:

Site boundary means that land or property contiguous with the facility and identified by the licensee, within which the licensee has the legal right to control access.

As an alternative, 10 CFR 20 Subpart E could be revised to apply to the restricted area as defined in 10 CFR 20.1003, as opposed to the site boundary. Unlike the site boundary definition, the restricted area contains all site properties associated with receiving, possessing, or using licensed materials. In addition, the restricted area definition includes lands legally controlled for the purposes of limiting public dose.

Language in the section-by section analysis of the proposed rule attempt to clarify the relationship between radiation exposure limits associated with 10 CFR 20 Subpart D, Subpart E, and the EPA 40 CFR 190 requirements referenced in 10 CFR 20.1301(d). However, it inappropriately establishes a new policy position as written. Exposures due to residual radioactivity associated with a terminated 10 CFR Part 50 license are outside the scope of EPA 40 CFR 190. If necessary, this material would be regulated by EPA under Superfund authority. It is therefore not necessary to reduce the 10 CFR 20 Subpart E standard to account for additional exposures that originate from the operation of nearby uranium fuel cycle facilities. NEI requests that this regulatory relationship be clarified in the final rule.

The proposed rule suggests that specific guidance is under development and will be available prior to the final rule. This guidance is designed to assist the licensees in identifying and accounting for any potential dose contribution from a partial site release

<sup>3</sup> See NUREG-75/094, § 2.1.12 (fn.) (1975); NUREG-0099, § 2.1.12 (fn.) (1976)

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of impacted lands on the final license termination. This guidance is needed before the rule is issued to ensure that the partial site release process and the ultimate license termination can be accomplished practically as envisioned. NEI is interested in reviewing and commenting on this guidance as it develops.

General comments and specific answers to the seven questions posed in the proposed rule are provided on the enclosure to this letter.

Once again, NEI appreciates the opportunity to provide these comments in support of the proposed rule. If you have questions concerning the enclosed comments, please contact me at (202) 739-8105 or Paul Genoa at (202) 739-8034.

Sincerely,

James W. Davis

Enclosure

**Industry Comments in Support of Proposed Rule, "Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan"**

**General Comments:**

NEI agrees with your assessment that: "...many material sites are more complex from a decommissioning perspective than reactor sites."

NEI agrees with your assessment that: "...a partial site release leaving residual radioactivity at a site that meets the release criteria for unrestricted use of 10 CFR 20.1402 is not considered a disposal."

NEI disagrees with the assumption that once an LTP is approved: "...there is no longer any need for a separate regulatory mechanism for partial site releases." Many years may pass between the LTP approval and license termination. A licensee should have the opportunity to pursue a partial site release post LTP approval without opening the entire LTP content to a hearing process.

NEI agrees with your assessment that: "...licensees are already maintaining property records in order to comply with the LTR at time of license termination..." however, the NRC should clarify the rule to acknowledge that reactor licensees maintain these records, along with those required under 10 CFR 50.75(g) in a distributed fashion. They do not reside in a specific file folder, but are maintained within the overall record management system.

**Specific Comments:**

The following comments or recommendations pertain to specific provisions within the proposed rule change to 10CFR50.

- Section 50.2: It is recommended that the definitions for "Historical site assessment" and for "Impacted areas" and "Non-impacted areas" should refer to the radioactive material or radioactivity from licensed activities.
- Section 50.75(g)(4): The language contained in this section does not blend with existing Section 50.75(g) wording, which states "Information the Commission considers important to decommissioning consist of..." and "Licensees shall maintain property records containing the following information:" NEI recommends the words "Licensees shall maintain" be removed from Section 50.75(g)(4).
- Section 50.75(g)(4)(iv): Recommend changing "disposition" the first time it appears to "release and final disposition" and change "disposition" to "release" the second time it appears.

- Section 50.82(a)(9)(ii)(H): Recommend adding the word unrestricted as indicated “...release for unrestricted use ...,”
- 50.82(11)(ii): Recommended change, “The final radiation survey and associated documentation demonstrate that the facility and site, including any parts released for unrestricted use before approval of the license termination plan, ~~are suitable for release in accordance with the~~ have met the applicable criteria for release for decommissioning in 10 CFR part 20, subpart E.”
- Section 50.83 (a)(1)(i): Recommended change, “The dose to individual members of the public from the portion of the facility or site ~~remaining under the license~~ that has not been released for unrestricted use does not ...”
- Sections 50.83(c) and 50.83(e) should include references to the satisfaction of the public meeting requirements similar to those specified in 50.83(f).
- Regarding release of impacted areas under the proposed partial release rule, 10 CFR 50.59 will not apply, since a license amendment would be required. Therefore, the wording in proposed section 10 CFR 50.83 (d)(1) should be modified to delete the reference to complete a 10 CFR 50.59 evaluation.

## Answers to NRC Questions

The following section pertains to the questions raised by NRC under Issues for Public Comment.

1. Are there rulemaking alternatives to this proposed rule that were not considered in the regulatory analysis for this proposed rule?

Yes. Some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands to provide additional assurance to future owners. This option should be included in the proposed rule.

2. Are the proposed definitions in 50.2 clear?

No. NEI believes that further clarification is needed and recommends that the definitions in proposed Section 50.2 be changed to reflect that the radioactive material or radioactivity be from licensed activities.

3. Is public involvement adequately considered?

Yes.

4. Should the license amendment process be required for all partial site release approvals, regardless of whether the site has been classified as non-impacted?

No. Adding this as a requirement is not justified for non-impacted partial site releases. However, some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands. NEI recommends that this approach be offered option.

5. Does the proposed rule make it adequately clear that when performing partial site releases and when releasing the entire site at license termination, licensees must consider potential dose contributions from previous partial releases in demonstrating compliance with the radiological release criteria?

Yes. However the promised guidance will help identify how this can best be accomplished.

6. Is there reason to limit the size or number of partial site releases?

No. As long as the final license termination addresses the entire site, the intent of the license termination rule is met.

7. Are there other potential impacts on continued operation or decommissioning activities as a result of partial site releases that should specifically be considered in the rule?

Yes. NEI does not agree with the assumption that once a License Termination Plan (LTP) has been approved there is no longer any need for a separate regulatory

mechanism for partial site releases. A significant length of time may pass between approval of the LTP and license termination. As stated in the general comments, NEI believes that licensees should retain the opportunity to pursue a partial site release even after the LTP has been approved without the need to reopen the entire LTP to a potential hearing process.