

April 18, 1989

Docket Nos. 50-335  
and 50-389

Mr. W. F. Conway  
Senior Vice President-Nuclear  
Nuclear Energy Department  
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EJordan, 3302 MNBB  
BGrimes, 9/A/2  
ACRS(10)  
BWilson, RII

Dear Mr. Conway:

SUBJECT: REQUEST FOR SCHEDULAR EXEMPTION FROM THE REQUIREMENTS OF 10 CFR  
50.54(w)(5)(i) - ST. LUCIE 1 AND 2 (TAC NOS. 69166 AND 69167)

On March 17, 1989 the Nuclear Regulatory Commission published the final rule amending the implementation schedule to change the effective date for the stabilization and decontamination priority and trusteeship provisions of its property insurance regulations (copy enclosed). The amended rule changes the effective date from October 4, 1988 to April 4, 1990.

By letter dated October 3, 1988, you requested an exemption from the provisions contained in 10 CFR 50.54(w)(5)(i). The above mentioned final rule amending the implementation schedule rendered your request moot. We are, therefore, stopping further action on your request and closing TACs 69166 and 69167.

Sincerely,

Original signed by

Jan A. Norris, Senior Project Manager  
Project Directorate II-2  
Division of Reactor Projects-I/II  
Office of Nuclear Reactor Regulation

Enclosure: As stated

cc w/enclosure:  
See next page

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PDR ADOCK 05000335  
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[TAC NOS 69166/69167]

LA: PDII-2  
DMiller  
04/10/89

PM: PDII-2  
JNorris:bd  
04/10/89

D: PDII-2  
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04/16/89

Mr. W. F. Conway  
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**NUCLEAR REGULATORY  
COMMISSION**

**10 CFR Part 50**

**Extension of Time for the  
Implementation of the  
Decommission Priority and  
Trusteeship Provisions of Property  
Insurance Requirements**

**Agency: Nuclear Regulatory  
Commission.**

**Action: Final rule.**

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**Summary: The Nuclear Regulatory  
Commission is amending the**

implementation schedule to change the effective date for the stabilization and decontamination priority and trusteeship provisions of its property insurance regulations. This delay in implementation is necessary because the insurers that offer property insurance for power reactors have informed the Commission that they will be unable to include the stabilization and decontamination priority and trusteeship provisions in their insurance policies within the date required by current regulations. Concurrently, the extension of the effective date of the rule allows the NRC to consider three petitions for rulemaking that propose changes to improve the efficacy of the NRC's stabilization and decontamination priority and trusteeship provisions.

**EFFECTIVE DATE:** March 17, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert S. Wood, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephones (301) 492-1280.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

On September 19, 1988, the Commission published a proposed rule in the Federal Register (53 FR 36336) that proposed to amend the implementation schedule for the stabilization and decontamination priority and trusteeship provisions of its property insurance regulations contained in 10 CFR 50.54(w)(5)(i) to change the effective date from October 4, 1988, to April 4, 1990. As explained in the proposed rule, this implementation schedule was part of a final rulemaking published on August 5, 1987 (52 FR 28963) which, for the first time, explicitly required power reactor licensees to purchase on-site property damage insurance policies in which \$1.0 billion of the proceeds from these policies are to be used first for stabilization of a reactor after an accident and then for decontamination of the facility before any other purpose. The 1987 final rule also required that these insurance proceeds be paid to an impartial trustee who would be required to disburse funds according to the stabilization and decontamination priority.

Subsequent to the publication of the 1987 final rule, the NRC was informed that the trusteeship provision and, to a lesser extent, the stabilization and decontamination priority provisions of that rule were sufficiently complex and problematic that the insurers were unable to incorporate such provisions in their policies by the required October 4, 1988, date.

As explained in the September 19, 1988, proposed rule, the insurers and their counsel gave two reasons why they were unable to comply with the date specified in the final rule for adding the stabilization and decontamination priority and trusteeship provisions. First, with respect to the trusteeship provision, counsel for insurers assured the NRC staff that they had made a good-faith effort to obtain trustees, but were unsuccessful. They believed the reason for their lack of success was the potential trustees' conflicts of interest and reluctance to assume, on the one hand, responsibility for disbursing potentially over \$1 billion in insurance proceeds and the resulting exposure to possible litigation for wrongful disbursement, while, on the other hand, being eligible for only modest fees for this service.

A second reason insurers gave for being unable to comply with the effective date of the 1987 rule was essentially logistical. As a contract, an insurance policy can only be modified with the consent of all affected parties. Because the Commission's mandated stabilization and decontamination priority and trusteeship provisions adversely affect the current rights under the policy of the bondholders' trustee, it is unlikely that policies could be legally changed before the end of the policy years. Because of insurers' policy renewal procedures and the policy anniversaries, these dates would have fallen after the effective date specified in the rule.

#### II. Summary of Comments, NRC Response and Conclusions

By the end of the comment period on October 19, 1988, the NRC received five comments. One of these was misdirected to this rulemaking. (Comment 1 was directed to rescinding § 50.54 (x) and (y) rather than § 50.54(w).) The remaining four either supported the proposed rulemaking (comment 4) or sought clarification of the applicability of 10 CFR 50.54(w)(5)(i) to specific licensees while the rulemaking was being considered (comments 2, 3, and 5). In addition, comment 4 suggested that, rather than provide a date certain in the rule, the stabilization and decontamination priority and trusteeship provisions of § 50.54(w) (3) and (4) be suspended indefinitely pending completion of consideration of three petitions for rulemaking (PRM-50-51, PRM-50-51A, and PRM-50-51B; 53 FR 36335, September 18, 1988).

The only issue of any controversy raised by commenters was whether the extension of time for implementing the

stabilization and decontamination priority and trusteeship provisions of § 50.54(w) should be for a date certain (i.e., April 4, 1990) or indefinite until consideration of the above-cited petitions for rulemaking has been completed. The Commission continues to believe that an 18 month extension is more appropriate than an open-ended extension. First as commenter 4 acknowledged, 18 months should be sufficient to complete consideration of the issues raised in the three petitions for rulemaking. Second if 18 months is insufficient, the Commission can act to further extend the implementation date. Finally, the Commission imposed the stabilization and decontamination priority and trusteeship provisions for valid health and safety reasons. Indefinitely deferring these provisions prior to a substantive reevaluation of their efficacy could conflict with the Commission's mandate to protect health and safety. The proposed rule analyzed why an 18 month delay would have minimal health and safety impact. The NRC believes that analysis remains valid.

For the foregoing reasons, the Commission concludes that a delay from October 4, 1988, to April 4, 1990, in the implementation schedule of the stabilization and decontamination priority and trusteeship provisions is justified and is amending 10 CFR 50.54(w)(5)(i) accordingly.

Because the amendment to § 50.54(w)(5)(i) relates solely to extending the time for implementing the stabilization and decontamination priority and trusteeship provisions of the property insurance rule and therefore provides relief from restrictions under regulations currently in effect, the Commission has found that good cause exists for making the rule effective on the date of publication in the Federal Register without the customary 30 day waiting period.

#### III. Environmental Impact: Categorical Exclusion

The NRC has determined that this rule constitutes a minor corrective amendment that does not substantially modify existing regulations and, therefore, is the type of action eligible for categorical exclusion under 10 CFR 51.22(c)(2). Accordingly, neither an environmental impact statement nor an environmental assessment is required.

#### IV. Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et

seq.). Existing requirements were approved by the Office of Management and Budget approval number 3150-0011.

#### V. Regulatory Analysis

On August 5, 1987, the NRC published in the *Federal Register* a final rule amending 10 CFR 50.54(w). The rule increased the amount of on-site property damage insurance required to be carried by NRC's power reactor licensees. The rule also required these licensees to obtain by October 4, 1988, insurance policies that prioritized insurance proceeds for stabilization and decontamination after an accident and provided for payment of proceeds to an independent trustee who would disburse funds for decontamination and cleanup before any other purpose. Subsequent to publication of the August 5, 1987 rule, the NRC was informed by insurers who offer nuclear property insurance that the decontamination priority and trusteeship provisions would not be able to be incorporated into the policies by the time required in the 1987 rule. In petitions for rulemaking, insurers' representatives further stated that the trusteeship provisions might actually have an effect counter to their intended purpose by delaying claims payment and thus possibly the cleanup process. By deferring implementation of these provisions by 18 months, the Commission is allowing sufficient time either to secure the required coverage or to reconsider the mechanism by which accident cleanup funds may be assured to be used for their intended purpose. Even without formal stabilization and decontamination priority and trusteeship provisions, NRC has authority to take appropriate enforcement action to order cleanup in the unlikely event of an accident. Thus, this rule will not have a significant impact on public health and safety. Furthermore, this rule will not have significant impacts on state and local governments and geographical regions; on the environment; or, create substantial costs to licensees, the NRC, or other Federal agencies. The foregoing discussion constitutes the regulatory analysis for this rule.

#### VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 606(b), the Commission certifies that this final rule does not have a significant economic impact on a substantial number of small entities. The final rule affects only those companies licensed to operate nuclear powerplants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the

Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

#### VII. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule because this rule would not impose a backfit as defined in § 50.109(a)(1). Therefore, a backfit analysis is not required for this rule.

#### List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear powerplants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR Part 50.

#### PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 162, 163, 166, 169, 68 Stat. 936, 937, 938, 948, 953, 964, 955, 956, as amended, sec. 234, 63 Stat. 1224, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); sec. 201 as amended, 202, 206, 66 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95-601, sec. 10, 92 Stat. 2961 (42 U.S.C. 5851). Section 50.10 is also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91-190, 63 Stat. 853 (42 U.S.C. 4332). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 66 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91-190, 63 Stat. 853 (42 U.S.C. 4332).

Sections 50.34 and 50.54 also issued under sec. 204, 68 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 66 Stat. 939 (42 U.S.C. 2152). Sections 50.80-50.81 also issued under sec. 184, 66 Stat. 964, as amended (42 U.S.C. 2234). Section 50.109 also issued under sec. 106, 66 Stat. 936, as amended (42 U.S.C. 2136). Appendix F also issued under sec. 187, 66 Stat. 955 (42 U.S.C. 2237).

For the purposes of sec. 223, 66 Stat. 958, as amended (42 U.S.C. 2273); §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54 and 50.80(a) are issued under sec. 161b, 66 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c), and 50.54 are issued under sec. 161i, 66 Stat. 948, as amended (42 U.S.C. 2201(i)); and

§§ 50.9, 50.55(e), 50.59(b), 50.70, 50.71, 50.72, 50.73, and 50.78 are issued under sec. 161c, 66 Stat. 950, as amended (42 U.S.C. 2201(c)).

2. In § 50.54, paragraph (w)(5)(i) is revised to read as follows:

#### § 50.54 Conditions of license

(w) . . .

(5) The decontamination priority and trust requirements set forth in paragraphs (w)(3) and (w)(4) of this section must:

(i) Be incorporated in onsite property damage insurance policies for nuclear powerplants not later than April 4, 1990 and

Dated at Rockville, Maryland this 10th day of March, 1989.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 89-6330 Filed 3-16-89; 8:45 am]

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