



FOSTER WHEELER ENVIRONMENTAL CORPORATION

February 2, 2005
FW-NRC-ISF-05-0015

U.S. Nuclear Regulatory Commission
ATTN: Document Control Desk
Washington DC 20555-0001

**SUBJECT: FOSTER WHEELER ENVIRONMENTAL CORPORATION
IDAHO SPENT FUEL (ISF) FACILITY
REQUEST FOR SCHEDULER EXEMPTION FROM
THE REQUIREMENTS OF 10 C.F.R. § 72.70(a)(1)
MATERIALS LICENSE NO. SNM-2512
DOCKET NO. 72-25**

Dear Sir or Madam:

On November 19, 2001, Foster Wheeler Environmental Corporation (FWENC) filed an application with the Nuclear Regulatory Commission (NRC) pursuant to 10 CFR Part 72 requesting a site-specific license. The ISF Facility is an independent spent fuel storage installation (ISFSI) to be located at the Idaho National Engineering and Environmental Laboratory (INEEL) site. The license was granted on November 30, 2004.

FWENC seeks a scheduler exemption from certain requirements in 10 CFR § 72.70(a)(1), which requires that a licensee submit the facility Final Safety Analysis Report (FSAR) no later than 90 days after issuance of the license. Please refer to the enclosure, "FWENC Request for Exemption from FSAR Submittal Requirement of 10 CFR § 72.70(a)(1)". This exemption would have no adverse regulatory or safety impact in that construction of the ISF Facility has not yet begun and is not anticipated to begin for several months, at the earliest.

As discussed herein, this exemption is necessary due to the fact that the Department of Energy (DOE), under Contract No. DE-AC07-00ID13729 has not provided adequate funding to FWENC for this aspect of the ISF Facility project. This exemption is further warranted because the DOE Idaho Operations Office has recently advised FWENC that the ISF Facility FSAR should be recategorized as DOE "Official Use Only" and, accordingly be withheld from unrestricted public access. To support this reclassification, prior to its submittal to the NRC and pursuant to the requirements of 10 CFR § 2.390, FWENC would have to substantially modify its FSAR submittal and prepare a redacted version for public release. These factors collectively and individually contribute to FWENC potentially not being able to submit a complete FSAR to meet the subject regulatory requirement.



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FWENC does not anticipate that this delay in satisfying 10 CFR § 72.70(a)(1) will be necessary for more than six months beyond the required submittal date of February 28, 2005.

Since the subject submittal is presently due by February 28, 2005, FWENC requests that the NRC provide this exemption no later than February 21, 2005. FWENC is fully aware that limited time remains for NRC's consideration of this exemption request. However, it only recently became apparent to FWENC that adequate funding would not be forthcoming in time to satisfy the subject regulatory requirement. The recent DOE request that the FSAR should now be categorized as "Official Use Only" has also served to exacerbate this situation. Therefore, if the NRC requires additional time to consider the exemption request or determines that the exemption is not warranted, FWENC respectfully requests that the NRC apply discretion by allowing, at a minimum, thirty additional days (March 28, 2005) for FWENC to evaluate its options regarding this project.

Please contact Ronald Izatt, ISF Facility Project Manager, or James Saldarini, ISF Facility Licensing Manager, with any questions.

Sincerely,



Eric C. Leuschner
Executive Director, ISF Project

ECL/mmh

Enclosure: FWENC Request for Exemption from FSAR Submittal Requirement of
10 C.F.R. § 72.70(a)(1)

cc: All with Enclosure
James R. Hall, SFPO Project Manager (NRC)
Bruce S. Mallett, Region IV Administrator (NRC)
Jan Hagers, DOE-ID
Ronald D. Izatt, Tetra Tech EC, Inc.
James C. Saldarini, Tetra Tech EC, Inc.
ISF Project File



ENCLOSURE TO FW-NRC-ISF-05-0015

IDAHO SPENT FUEL (ISF) FACILITY
FWENC REQUEST FOR EXEMPTION FROM FSAR SUBMITTAL
REQUIREMENT OF 10 C.F.R. § 72.70(a)(1)
MATERIALS LICENSE NO. SNM-2512
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1.0 SPECIFIC REQUESTED EXEMPTION

Foster Wheeler Environmental Corporation (FWENC) specifically requests scheduler relief from the requirement in 10 CFR § 72.70(a)(1), which states, "Each licensee shall submit an original FSAR to the Commission in accordance with §72.4, within 90 days after issuance of the license." FWENC requests that the NRC issue an exemption allowing the Idaho Spent Fuel (ISF) Facility Final Safety Analysis Report (FSAR) to be submitted to the NRC no later than August 28, 2005 or no later than thirty days prior to the commencement of construction, whichever comes first.

2.0 OVERVIEW

On November 19, 2001, FWENC filed an application with the NRC under 10 CFR Part 72 for a license to construct and operate the ISF Facility, an independent spent fuel storage installation (ISFSI). That license was granted on November 30, 2004. The ISF Facility is designed and licensed by FWENC, and will be constructed and operated on behalf of DOE under a privatization contract between the DOE and FWENC. (A copy of Contract No. DE-AC07-00ID13729 has previously been provided to the NRC during the licensing phase of this project.) The facility will be located at the Idaho National Engineering and Environmental Laboratory (INEEL), adjacent to the Idaho Nuclear Technology and Engineering Center (INTEC) site. The ISF Facility provides interim storage for certain spent nuclear fuel, as described in the ISF Facility license.

Specifically, FWENC seeks an exemption from certain requirements in 10 CFR § 72.70(a)(1) which requires that a licensee submit a copy of the facility FSAR no later than 90 days after issuance of the license. The bases for this exemption request are set forth below. Consistent with the requirements of 10 CFR § 72.7, the granting of this exemption application is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest.

3.0 DISCUSSION AND SUPPORTING BASES FOR FWENC EXEMPTION REQUEST

FWENC requests a scheduler exemption from 10 C.F.R. § 72.70(a)(1) until it has an opportunity to resolve certain contractual matters with the DOE. These issues include: (1) when DOE will provide adequate funding to support preparation and submittal of the FSAR and (2) performing a review of, and reaching a conclusion regarding a recent DOE request that the complete FSAR be

categorized, " Official Use Only." As the NRC is aware, pursuant to 10 CFR § 2.390, such a categorization likely would require submittal of a redacted FSAR for public use and possibly more specific indications in the FSAR noting specifically which information in the FSAR is for Official Use Only and which parts may be released to the public.

a. DOE's Failure To Provide Adequate Project Funding For This Activity Precludes FWENC's Timely Compliance With The FSAR Submittal Schedule In 10 CFR § 72.70(a)(1)

FWENC is under contract with DOE to operate the ISF Facility, at a minimum, through 2010, when its contract with DOE comes to an end. Facility operation beyond that date will require either an extension of the FWENC contract with DOE, award of a new contract to FWENC, or transfer of ISF Facility operations to a successor contractor, subject to approval by the Nuclear Regulatory Commission, as appropriate. In sum, this ISF Facility license has been obtained based on DOE's request and funding. FWENC does not have a regulatory or corporate need to construct or operate the facility absent the request of DOE. DOE is contractually required to provide sufficient funding to cover the licensing, construction and decommissioning of the facility.

Section B.9, Funding Obligations, of the contract between FWENC and the DOE states, in relevant part:

...The parties contemplate that the Department of Energy will obligate additional funds incrementally to the contract as necessary to secure timely contract performance in accordance with the contract schedule and to meet the Government's termination liability requirements in the event of a termination for convenience. The Contractor shall provide an annual update of funding profile and schedule of values, required elsewhere in this contract, by March 1 of each year, which will be used as the basis for the Department of Energy's budget and appropriation requests to Congress.

To date, DOE has not obligated, pursuant to the above provision, sufficient funding to enable FSAR completion. While obligation of funds pursuant to the contract is a matter within the DOE's control, FWENC anticipates resolving this matter as soon as possible and no later than six months from now.

b. DOE Recently Requested That FWENC Categorize The FSAR As " Official Use Only"

The Department of Energy Idaho Operations Office (DOE-ID) recently performed a sensitivity review of Revision 3 of the ISF Facility SAR and the ISF Facility Emergency Plan to determine whether DOE has any concerns with unrestricted public release of this document. According to DOE, this review considered both NRC and DOE guidelines.

DOE has concluded that several sections of the current revision of the SAR and Emergency Plan contain information considered sensitive in nature. Based on an evolving security posture within both NRC and DOE, DOE-ID has requested that FWENC consider categorizing the entire ISF FSAR and ISF Emergency Plan as " Official Use Only" and accordingly withheld from unrestricted public access. DOE states that it has proposed this action to FWENC to eliminate the need to continuously monitor these documents as security postures evolve within both federal agencies and to obviate the need to reconcile any differences in approach as these policies mature.

DOE has requested this re-categorization of the FSAR status despite the fact that DOE has not provided the requisite funding for submittal of the updated FSAR. FWENC cannot implement DOE's request without substantial evaluation of the FSAR and resolution of the relevant contract funding issues. This request was not anticipated by FWENC and significantly impacts any efforts to make timely submittal of a FSAR to the NRC. FWENC continues to try to understand more clearly the basis for DOE's categorization request and to determine what redactions would be necessary for a companion FSAR submittal that would be provided to the NRC (for use by the public) along with the complete version.

4.0 CONCLUSION

In conclusion, FWENC respectfully requests the NRC's expeditious review and approval of the subject exemption request for scheduler relief from the provisions of 10 CFR § 72.70(a)(1). The situation that FWENC finds itself in is unique to the DOE privatization program and, as such, likely has not been previously encountered by the NRC. However, the novel nature of this submittal should not cause such a request to be rejected. In sum, there is no safety impact due to granting the requested relief. FWENC's request of the NRC is reasonable, especially considering the fact that construction of the facility has not yet begun and is not anticipated until the aforementioned contract issues are resolved. FWENC fully recognizes its responsibilities as licensee, and will keep the NRC apprised on our progress in this regard. Consistent with the requirements of 10 CFR § 72.7, granting this exemption request is authorized by law, and will not, in any way, endanger life or property or the common defense and security, and is otherwise in the public interest.