COMGBJ-05-0001

May 18, 2005

MEMORANDUM TO: Chairman Diaz
Commissioner McGaffigan
Commissioner Merrifield
Commissioner Lyons

FROM: Gregory B. Jaczko ***/RA/***

SUBJECT: IMPROVING TRANSPARENCY IN THE 10 CFR §20.2002 PROCESS

Recently the agency has received a great deal of attention from a variety of external stakeholders regarding the NRC process for addressing requests under 10 CFR § 20.2002. Upon consideration of this increased attention, I believe that in the future the NRC staff should publish in the *Federal Register* and seek public comment on any draft finding of no significant impact (FONSI) rendered pursuant to a 10 CFR § 20.2002 request.

A section 20.2002 request, if approved, permits an NRC licensee to dispose of material generated at its licensed facility in a manner not otherwise provided for in our regulations. The present frustration surrounding these requests appears to be the result of a lack of public understanding and involvement on these issues. I believe publishing a draft FONSI rendered pursuant to a 10 CFR § 20.2002 request would allow the public to better educate themselves on these issues and would provide a process for their participation. Thus, this would serve to increase both communication with external stakeholders and transparency in the agency's processes.

Many of the staff's reviews conducted to assess applicant's requests filed with the NRC do provide for some level of public participation - either through the agency's adjudicatory process or, most commonly, through the agency's implementation of the National Environmental Policy Act (NEPA). The agency's current process for reviewing 10 CFR § 20.2002 requests does not always allow for these avenues of public involvement. Under NRC regulations, the environmental impacts of 10 CFR § 20.2002 requests are analyzed by the staff in an environmental assessment. After analyzing the proposal, if the staff determines that there is not a significant environmental impact as a result of the proposed action, the staff is required to publish a *Federal Register* notice announcing the availability of the final environmental assessment along with a finding of no significant impact (FONSI). Prior to this publication, the staff seeks only limited comments from a select group of stakeholders including the directly affected states. The NRC's regulations do not require that a draft version of the environmental assessment and FONSI be published for general public comment. The regulations do, however, recognize that it may be desirable in some instances to do so, for example, when doing so would further the purposes of NEPA. *See* 10 CFR § 51.33(b)(2).

Given the amount of attention the recent 10 CFR §20.2002 requests have received, I believe that the agency is presented with an opportunity to find an effective means by which interested stakeholders could participate in the process and thus, become better informed about the nature of these requests. I believe NEPA provides us with just such a process tool. In fact, one of NEPA's primary objectives is to ensure that agency decisionmakers take environmental factors into account when making decisions regarding proposed actions. NEPA accomplishes this goal in a variety of ways, one of which is through ensuring that comments on environmental actions are received and appropriately considered by decisionmakers before rendering a final decision on the proposed action. By publishing the draft FONSI associated with a 10 CFR § 20.2002 request, the staff could respond to substantive comments on these requests and facilitate meaningful discussion in a well-defined process. Given the recent attention and apparent misunderstanding of these requests, the 10 CFR § 20.2002 requests appear to me to be a perfect example of when utilizing the discretionary authority provided by NRC regulations to publish a draft FONSI for comment would precisely serve the stated purpose of NEPA and at the same time provide a simple yet effective way for those with interests in this area to meaningfully participate in the process.

SECY, please track.

cc: OGC
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