

July 12, 2005

Alan P. Nelson
Chief, Emergency Preparedness
Regulatory Affairs
Nuclear Energy Institute
1776 I Street NW, Suite 400
Washington, D.C. 20006-3708

Dear Mr. Nelson:

Thank you for your letter dated March 28, 2005, which provided the revised Nuclear Energy Institute's (NEI) 50.54(q) guidance document, "NEI 10 CFR 50.54(q) Guidance March 2005," and the new NEI White Paper, "Emergency Plan Change Process 10 CFR 50.54(q)." The Nuclear Regulatory Commission (NRC) appreciates NEI's determination and initiatives with respect to 10 CFR 50.54(q). The NRC agrees with NEI on the need to improve the implementation of the 10 CFR 50.54(q) process such that it is objectively and consistently applied. We have been working to achieve this shared vision.

The NRC staff reviewed the revised guidance and White paper to determine if the three major concerns which the staff initially provided to NEI in a letter dated September 22, 2004, were addressed. Upon review, the staff determined that progress has been made, however, with the introduction of the new terminology in NEI's March 2005 guidance document and White Paper, outstanding issues remain. As you know, the NRC staff discussed these issues at the public meeting held with NEI and industry representatives on April 26, 2005. In addition, the staff obtained Regional comments on the NEI 10 CFR 50.54(q) guidance document and the new NEI White Paper. The attachment to this letter includes a summary of our (which includes the Regions) three major concerns and the progress that has been made to date.

As an action item from the April 26, 2005, public meeting, the NRC committed to evaluate other areas (fire protection, quality assurance, and security) that use decrease in effectiveness or a similar concept, reduction in commitment. Our evaluation will determine if there are any efficiencies in those processes that would be applicable to the change processes of 10 CFR 50.54(q). In addition, the NRC is considering, the development of a frequently asked question (FAQ) process or an NUREG that would have additional examples of what would and would not be considered a decrease in effectiveness. The NRC would appreciate receiving any comments NEI has on this proposal.

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In conclusion, for NRC endorsement of the 10 CFR 50.54(q) guidance and new White Paper, the comments provided in the attachment would have to be adequately addressed. If you have any questions or comments, please contact Stacey Rosenberg at (301) 415-3868 or Kevin Williams at (301) 415-1104.

Attachment: As stated

Sincerely,

/RA/ Eric Weiss for

Nader L. Mamish, Director
Emergency Preparedness Directorate
Division of Preparedness and Response
Office of Nuclear Security and Incident Response

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SISP Review Completed by: Kevin Williams

ADAMS Accession Number: ML051740340

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NRC Major concern: The use of “regulatory commitment and “for ”information only”

The staff notes that NEI removed “regulatory commitment” from its guidance and replaced it with “Emergency Plan Requirement,” which is consistent with RIS 2005-02, “Clarifying the Process for Making Changes to Emergency Plans.” In addition, “information only” was addressed by adding the clarifying language in Step 4 of “information in the section of the plan was provided for supplemental information for the purpose of providing clarification.” Therefore, the NRC believes this major concern has been adequately addressed.

NRC Major concerns: Section, 4 “the definition of a decrease in effectiveness” and “exceeds the baseline standards”

These issues are reflected by the NEI Guidance document's approach of defining a "decrease in effectiveness" and the use of “exceeds the baseline standard” as including consideration of whether a proposed change would not meet the requirements of 10 CFR 50.47 planning standards and Appendix E. Although the words “exceeds the baseline standard” no longer appear in the guidance document, the concept has been retained by the use of the new terms “substantial/unnecessary margin of safety” and “excess margin.” Section 50.54(q) has two separate elements for determining whether a change can be made, viz., the "decrease in effectiveness" element, and the "continues to meet the standards of § 50.47(b) and the requirements of appendix E. . . .” The NEI Guidance, as currently written, incorrectly treats the element of meeting the NRC regulations and the concept “exceeds the baseline standard” as a subset of the "decrease in effectiveness" element. The NRC believes that the NEI Guidance may be clarified by simply removing from the discussion of decrease in effectiveness the references to meeting § 50.47(b) and the requirements of Appendix E, and the terms “excess margin” or “substantial/unnecessary margin of safety.” This would track 50.54(q) and resolve these major concerns.

NRC Minor Comments

As a separate minor matter, we note that a change to Appendix E, which became effective on April 26, 2005, allows licensees to make changes to emergency action levels under 10 CFR 50.54(q) without State and local governmental authority approval, except when initially implemented [Vol. 70, No. 16 FR 3599, January 26, 2005]. We suggest that the NEI Guidance be amended to reflect this recent rule change.

The NRC also has a concern with the use of the terms “substantially” and “significant” as there is no clear criterion for their application. Therefore, use of these terms would add subjectivity to the 10 CFR 50.54(q) process.

Attachment