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U.S. Nuclear Regulatory Commission  
Attn: Rulemakings and Adjudications Staff  
11555 Rockville Pike  
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DOCKETED  
USNRC

January 25, 2006 (11:25am)

Subject: Comments on Proposed Rule RIN 3150-AH60 (70 FR 67380)

OFFICE OF SECRETARY  
RULEMAKINGS AND  
ADJUDICATIONS STAFF

Dear Madame Secretary:

I am writing in support of the NRC's proposed rule to revise the design basis threats in 10 CFR Part 73, dated November 7, 2005. I would encourage the NRC in this important effort.

I am also provide comments on the proposed rule text and responding to questions asked by the NRC in the FRN.

Sincerely,



W. Alexis

Attachment: As stated

Template = SECY-067

SECY-02

## Comments on RIN 3150-AH60

1. The NRC has modified the current approach in § 73.1 that treated general and specific license independent spent fuel storage installations (ISFSIs) under 10 CFR Part 72 the same from a DBT perspective. That approach was correct as a general or specific licensed ISFSI could both store the same spent fuel in the same cask, e.g., 30,000 MWD burnup, 17x17 PWR fuel in a Hi-Storm 100 cask.

**Comment:** The NRC has not provided a specific rationale in the preamble [to the proposed rule] as to why a specific license ISFSI with security requirements arising from the security requirements in § 72.182 should be subject to a different DBT than a general license ISFSI with security requirements arising from § 72.212, given that nearly identical spent fuel in identical storage casks at these two classes of licensees.

**Recommendation:** That the NRC describe in the final rule why these two types of ISFSIs should be treated differently from a DBT perspective or indicate they are to be treated the same.

**Recommendation:** That the NRC Apply the DBT equally to both general and specific licensed ISFSIs. {see also comment 2.}

2. The NRC is continuing [in the proposed rule] the current approach in § 73.1 that licensees subject to the provisions of § 73.20 (i.e., a spent fuel reprocessing facility), § 73.50 (i.e., a spent fuel hot cell facility), § 72.212 (i.e., a general license independent spent fuel storage installation), and § 73.60 (i.e., a research and test reactor facility) are exempt from certain aspects of the DBT. Further, a § 72.212 ISFSI [with spent fuel] is treated differently than a § 73.20 spent fuel reprocessing facility, § 73.50 spent fuel hot cell facility, or a § 73.51 specific licensed ISFSI, and MRS, or a GROA [all containing spent fuel]. However, the proposed rule does indicate that a Cat I SSNM facility or transportation of Cat I SSNM, under § 73.20, is subject to the full DBT(s).

**Comment:** The NRC has not provided a specific rationale in the preamble as to why this difference should exist, other than to refer to previous Orders. One of the significant differences is in not allowing the use of water-borne vehicles to transport adversary personnel and equipment to near a facility. A second is not allowing the use of water-borne vehicle bombs and coordinated assault. A third is in allowing a land vehicle bomb and coordinated assault only at spent fuel in ISFSIs, but not spent fuel in reprocessing facilities or in hot cells. However, I do believe a case can be made for treating spent fuel at research and test reactors differently.

With respect to water-borne vehicle bombs, I believe a workable approach is to indicate that they apply to facilities under §§ 73.20, 73.50, and 73.51. However, where the land vehicle bomb threat surrounds a facility on 360°, no further licensee analysis or protection against water-borne threats is required. Furthermore, the NRC staff is aware that some existing ISFSIs are not enveloped on 360° by a land vehicle bomb threat.

**Recommendation:** The language in § 73.1(a)(1)(i)(E) should be revised to strike “to the proximity of vital areas” to be consistent with the proposed language in § 73.1(a)(2)(i)(E). Since vital areas have a protected area between it and the outside world, the better choice is to strike the phrase rather than replace “vital area” with “protected area.”

**Recommendation:** The exemption language at the end of § 73.1(a) should be revised to only refer to § 73.60 [research and test reactor facilities], i.e., all facilities under §§ 73.20, 73.50, 73.51, and 72.212 should be subject to the full radiological sabotage DBT.

3. The current adversary characteristics documented in DG-5017 [radiological sabotage] are not the same as the adversary characteristics documented in DG-5018 [theft and diversion].

**Comment:** The NRC staff is aware that certain attack methods (i.e, weapons) that are included in DG-5018, not included in DG-5017, could likely be effective at penetrating spent fuel storage or transportation casks and releasing a portion of their spent fuel contents to the environment [under assault by an adversary]. I recognize that this may not be the case [in the use of these attack methods] against reactors.

**Recommendation:** The NRC should develop a third adversary characteristics regulatory guide that would apply to spent fuel dry storage, processing, handling facilities and transportation activities that would incorporate attack methods or weapons from both DG-5017 and DG-5018 that could be effective in releasing spent fuel to the environment. This would be in recognition that reactor operations are different [in many cases] from spent fuel operations.

4. With respect to the NRC's request to public comment on the *Energy Policy Act's* direction on a large number of adversaries attacking a spent fuel shipment, I would suggest the size of the attack force be limited to the current values contained in DG-5017. However, with respect to weaponry used to attack spent fuel shipments, I reiterate my comment 3 above.