

PROPOSED TALKING POINTS
OCTOBER 24, 2006 TELCON WITH NRC OGC

I. Questions re LWA Proposed Rule (71 Fed. Reg. 61,330)

Revised Section 50.10(b) in the proposed rule defines “construction” for which an LWA must be obtained to include:

“Excavation, subsurface preparation including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in place fabrication, erection, integration, or testing, for any structure, system or component of a facility required by the Commission’s rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report.” 71 Fed. Reg. at 61,347. (See also *id.* at 61,336-37).

Excavation is defined to include the “removal of any soil, rock, gravel, or other material below the final ground elevation, in preparation for the placement of the foundation and associated retaining walls.” 71 Fed. Reg. at 61,336-37. Contrast this to “initial site grading to attain the final ground elevation, and erosion control measures to preclude run-off at the location where further excavation will be required,” which would not require an LWA. *Id.* at 61,336.

- What is the legal basis for requiring an LWA for all “excavation” activities, and for characterizing excavation as an activity with “a reasonable nexus to radiological health and safety and/common defense or security?”
- Does the inclusion of “excavation” activities under “construction” definition reflect a NEPA concern, a safety concern, or both?
- The proposed new definition of construction would appear to allow excavation for any structure, system or component (SSC) of a facility NOT required to be described in the SSAR, PSAR, or FSAR without an LWA. In the Staff’s view, what SSCs and what facilities would this include?
- Would it include only those activities described in proposed Section 50.10(b)(1) – (8), or other activities as well?
- Confirm types of activities that could be performed under the definition of “on-site, in place fabrication, erection, integration or testing” without an LWA (e.g., “fabricate, assemble and test components and modules in a shop building, warehouse, or laydown area located on-site.” 71 Fed. Reg. at 61,336).

- Industry believes that the NRC should consider an alternative, less restrictive definition of “construction” for which an LWA is required. For example, “construction” could be defined to exclude “excavation,” as follows:

“Subsurface preparation including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in place fabrication, erection, integration, or testing, for any safety-related structure, system or component of a facility.”

- Alternatively, “construction” could be redefined for purposes of the LWA rule so as to limit it to safety-related SSCs. For example, “construction” would include:

“Excavation, subsurface preparation including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in place fabrication, erection, integration, or testing, for any safety-related structure, system or component of a facility.”

- Another alternative would be to revise the definition of “construction” to reflect both of these changes, as follows:

“Subsurface preparation including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in place fabrication, erection, integration, or testing, for any safety-related structure, system or component of a facility.”

- What is the NRC’s best estimate as to the time that will be needed for an applicant to obtain an LWA under the proposed revisions to 10 CFR 50.10, including hearing time? Please break down this time estimate into license review time and hearing time.
- How should applicants interpret the term “new and significant information” in revised Section 51.49(d)(4) and (e)?

II. Questions re other Part 52 Licensing Process Enhancements

- Discuss draft Commission policy statement on new reactor licensing (10/20/06 draft), as it may or may not address the following topics:
 - Early submittal of segregable portions of the ESP or COL application
 - More timely completion of licensing reviews and issuance of licensing documents (draft/final EIS, SER with open items), by imposing schedules on Staff and NRC contractors
 - More timely commencement of hearings based on draft EIS
 - Shorter hearing duration; more prompt issuance of ASLB decisions
 - Use of legislative hearings for ITAAC hearing
- What are the prospects for adoption of any of industry's proposed license and hearing process enhancements outside the context of this policy statement?
- What are the prospects for adoption of industry's proposed changes relating to greater finality of previously resolved environmental issues in the context of the ongoing Part 52 rulemaking (in Commission Supplementary Information guidance)?