



NUCLEAR ENERGY INSTITUTE

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March 26, 2008

Mr. Brian W. Smith
Chief, Enrichment and Conversion Branch
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Re: February 22, 2008 Part 40 Public Workshop

Project Number: 689

Dear Mr. Smith:

The Nuclear Energy Institute (NEI) would like to thank you and your staff for conducting the public meeting on the regulation of uranium conversion/deconversion facilities at the U.S. Nuclear Regulatory Commission (NRC) headquarters' offices on February 22, 2008. We have attached comments regarding the meeting for your review.

On behalf of the fuel cycle industry, NEI fully supports and shares the NRC's mission of protecting public health and safety, as well as that of the workers at licensed facilities and the environment. We also fully support the Commission's decision that NRC, and not an Agreement State, should retain regulatory jurisdiction through Part 40 over any uranium conversion/deconversion facility.

In general, we support the concerns expressed by the Honeywell Metropolis Works plant management as stated in their letter to you dated March 20, 2008, and offer additional comments in the attachment. We trust that industry will be afforded additional opportunities to help formulate any proposed and final rule on these important topics, and we look forward to further dialog on such matters.

Thank you again for the opportunity to provide input. If you have questions regarding the comments, please contact me at 202-739-8126; fmk@nei.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Felix M. Killar, Jr.", is written in a cursive style.

Felix M. Killar, Jr.

Attachment

**Comments on February 22, 2008
Part 40 Public Workshop**

Part 40 versus Part 70-based Integrated Safety Analysis:

On behalf of the industry, we firmly believe that any Part 40 requirement for an Integrated Safety Analysis (ISA) at a conversion/deconversion facility must be commensurate with the radiological risk and therefore distinguished from the nuclear criticality-based ISA requirements in Part 70 and applied to fuel cycle facilities. The current NRC-approved ISA for the Honeywell plant is consistent with this approach and is an effective tool for managing such risks at the plant. Consideration should also be given to what additional requirements beyond those currently in Part 20, if any, are necessary in Part 40 since Part 20 adequately addresses public and worker radiation hazards and all NRC-licensed facilities are subject to Part 20 requirements.

Part 40 Rulemaking Process:

Any rulemaking to promulgate Part 40 ISA requirements must be conducted through a deliberative process with opportunities for industry input. Development and implementation of the Honeywell ISA required a considerable expenditure of resources, in the absence of a regulatory requirement to do so, and continues to require significant resources to monitor and modify as needed. Therefore, regulatory stability and predictability for any Part 40 licensed facility, while ensuring continued safe and secure operations, should be our mutual goal.

Also, we strongly encourage the NRC to ensure that resources are available to publish draft and final licensing and inspection guidance commensurate with any proposed and final Part 40 rule. This approach will help avoid the myriad of implementation issues which result from a new rule and that we, collectively, continue to address with Part 70 even though it has been in effect for several years, e.g., Part 70.72, Appendix A.

Chemical and Radiological Risks:

As stated during the February 22, 2008 public meeting, the regulation and management of chemical versus radiological risks was a complex and challenging issue when promulgating the current Part 70. An approach which is essentially consistent to that used in Part 70 should be reflected in a revised Part 40. Specifically, NEI and the industry have historically supported NRC's involvement in and oversight of those aspects of chemical safety, at an NRC-licensed facility, that are directly associated with NRC-licensed activities and radiological materials. We continue to support NRC's role in this regard and trust that a consistent regulatory approach would also be reflected in any Part 40 rule.

Part 40 License Term:

As you are aware, the NRC-approved ISA and Honeywell license was issued for a 10-year term, unlike the 40-year license terms for Part 70 facilities. The basis for this license term inconsistency is not readily apparent, and it is our understanding from NRC staff that a rule change is needed to modify the Honeywell license term. We suggest that the issue of license term be addressed in any Part 40 rulemaking.

Backfit Provision:

Currently, Part 40 does not contain a backfit provision. We strongly encourage the NRC to include such a provision in any Part 40 rulemaking. The Part 70 backfit provision became effective upon NRC approval of the ISA Summary. Honeywell has completed its ISA and the NRC has accepted it, therefore the backfit provision should be incorporated into Part 40 with minimal additional deliberation. This approach will help ensure regulatory consistency with other major NRC-licensed facilities such as nuclear power plants.