

May 8, 2008

MEMORANDUM TO: R. W. Borchardt
Executive Director for Operations

FROM: Dennis K. Rathbun, Director
Division of Intergovernmental Liaison
and Rulemaking **/RA/**
Office of Federal and State Materials
and Environmental Management Programs

SUBJECT: FINAL RULE TO AMEND 10 CFR PART 72 LIST OF APPROVED
SPENT FUEL STORAGE CASKS (HI-STORM 100)

On December 31, 2007, a direct final rule, along with its companion proposed rule, was published in the *Federal Register*. These rules were intended to amend 10 CFR Part 72 by revising the Holtec International HI-STORM 100 cask system listing within the list of approved spent fuel storage casks to include Amendment Number 5 to Certificate of Compliance (CoC) Number 1014. In response to the request for public comments, a significant adverse comment was received; as a result, the direct final rule was withdrawn.

Enclosed, for your signature, is a final rule (Enclosure 1) amending U.S. Nuclear Regulatory Commission (NRC) regulations, by amending the list of approved spent fuel storage casks (10 CFR 72.214) to add Amendment Number 5 to the Holtec International HI-STORM 100 cask system.

Background: On December 31, 2007, NRC published a direct final rule (72 FR 74162) and a companion proposed rule (72 FR 74209) to amend 10 CFR 72.214, "List of approved spent fuel storage casks." The rules were intended to revise the Holtec International HI-STORM 100 cask system listing to include Amendment Number 5 to CoC Number 1014. The comment period ended on January 30, 2008. One comment letter was received on the proposed rule.

Based on review and analysis of the public comment, the Office of Federal and State Materials and Environmental Management Programs, the Office of Nuclear Material Safety and Safeguards, and the Office of the General Counsel (OGC) staffs identified a significant adverse comment that required a response from NRC. The comment addressed a technical issue in the Description section of the CoC, and the staff has responded to the comment in the final rule. In addition, Holtec International identified two minor typographical errors in Appendix A of the Technical Specifications (TS) in Table 3-1 and TS 3.1.2.

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The NRC staff finds that the cask system, as designed and when fabricated and used under the conditions specified in its CoC, meets the requirements of 10 CFR Part 72; thus, adequate protection of public health and safety is ensured.

Notices: Enclosure 2 (“EDO Daily Note”) documents that the Executive Director for Operations (EDO) intends to sign the *Federal Register* notice. Enclosure 3 (“Notice of Final Rule Signed by the EDO”) documents that the EDO has signed the *Federal Register* notice. The “Approved for Publication,” the Environmental Assessment, and the Congressional Review Act forms can be found in, respectively, Enclosures 4 through 6 of this paper. The appropriate Congressional committees will be notified.

Resources: No additional resources will be needed to implement this rule.

Coordination: The Office of Administration concurs with this amendment. OGC has no legal objection.

Enclosures:

1. FRN of Final Rulemaking
2. “EDO Daily Note”
3. “Notice of Final Rule Signed by the EDO”
4. “Approved for Publication”
5. Environmental Assessment
6. CRA Forms

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