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OFFICE OF SECRETARY
RULEMAKINGS AND
ADJUDICATIONS STAFF

Secretary, U.S. NRC
Washington DC 20555-0001
ATTN: Rulemaking and Adjudications Staff SECY@nrc.gov
RE: RIN 3150-AH45

Alliance for Nuclear Responsibility Comments on RIN 3150-AH45, 10 CFR Parts 20, 30, 40, et al.
Decommissioning Planning Proposed Rule

The Alliance for Nuclear Responsibility (A4NR) is in agreement with both Pilgrim Watch and Riverkeeper relating to RIN 3150-AH45, 10 CFR Parts 20, 30, 40, et al. Decommissioning Planning Proposed Rule.

A4NR agrees with Pilgrim Watch and Riverkeepers changes recommended on the following issues:

1. Requirements need to be spelled out as requirements not as options for the licensee – Change “may” to “shall” throughout.
2. Subsurface contamination should be defined to and inclusive of the groundwater table.
3. “Significant contamination” is left undefined. The NRC Groundwater Contamination (Tritium) at Nuclear Power Plants Task Force, Final Report, September 1, 2006 (hereafter “LLTF”), Section 3.2.1.4, page 22 stated that “[the staff should] clearly define “significant contamination.” It is no less true in 2008.
4. Survey requirements are not defined – no specifications for their frequency or methods to conduct surveys.
5. The proposal says that survey requirements “may” include groundwater monitoring (Subsection J); and equally it “may not.” Monitoring wells are not required at reactors unless the onsite water is used for drinking; and it is clear from the epidemic of leaks that have occurred recently around the country that monitoring wells must be required.

Instead of requiring monitoring wells in response to Tritium leaks at Braidwood, Palo Verde etc., once again the NRC acquiesced to the industry and allowed a voluntary NEI Groundwater Protection Initiative to take the place of an NRC required monitoring well network. The result is that there is nothing the public can count on – no enforcement or accountability – and the public gets short-changed.

6. NRC’s expectations are that no additional surveys will be required of power reactors; because the NRC assumes that procedures are now adequate. The proposal says that it may be necessary...to take further actions if significant residual radioactivity is identified – determined on a case-by-case basis (Section J). This is meaningless because first “significant residual radioactivity,” as discussed above at 3, significant is not defined; and second unless there are required effective survey techniques and transparent reporting requirements no one will know the extent of the “significant the residual radioactivity” – including the licensee. It is clear that the NRC learned no lessons from NRC’s own Groundwater Contamination (Tritium) at Nuclear Power Plants Task Force, Final Report.

The report’s Executive Summary [at ii] said that,

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- “The task force did identify that under the existing regulatory requirements the potential exists for unplanned and unmonitored releases of radioactive liquids to migrate offsite into the public domain undetected.
- Some of the power plant components that contain radioactive fluids that have leaked were constructed to commercial standards, in contrast to plant safety systems that are typically fabricated to more stringent requirements. The result is a lower level of assurance that these components will be leak proof over the life of the plant.
- Some of the components that have leaked were not subject to surveillance maintenance, or inspection activities by NRC requirements. ...relatively low leakage rates may not be detected by plant operators, even over an extended period of time.
- Leakage that enters the ground below the plant may be undetected because there are generally no NRC requirements to monitor the groundwater onsite for radioactive contamination.
- Contamination in groundwater onsite may migrate offsite undetected.

A4NR agrees with Pilgrim Watch conclusion that NRC's expectations are that no additional surveys will be required of power reactors; because NRC assumes that procedures are now adequate [Section J of the proposal] has no validity.

7. Reporting requirements: Section L states that there is no requirement for licensees to submit reports but only keep reports onsite (FR 3821). Reports should be submitted to NRC and made public on ADAMS, with proprietary trade information redacted as necessary. The public has a right to know what radioactive materials, whatever the amount, are being “inadvertently” discharged or leaked into the environment. Again NRC learned no lessons from NRC's own Groundwater Contamination(Tritium) at Nuclear Power Plants Task Force, Final Report.

No specific regulatory requirements for licensees to conduct routine onsite environmental surveys and monitoring for potential abnormal spills and leaks of radioactive liquids. However, 10CFR 50.72(g) requires that licensees keep records of information important to the safe and effective decommissioning of the facility. These records include information about known pills [Added by PW, key word “known”].

The rule does not define the magnitude of the spills and the leaks that need to be documented by the licensee. Also the rule does not define “significant contamination” that needs to be recorded after the cleanup process. There is no requirement that this information must be submitted to the NRC. However, the records are available for review by NRC inspectors.

Although 10CFR50.75(g) discusses the requirement for records of any remaining residual contamination, there are no regulatory requirements which require remediation while the power plant is operating. A licensee's decision to remediate contamination before the plant is decommissioned is typically based on several factors, including ALARA considerations for potential worker and public dose, cost, feasibility, disposal options, and external stakeholder considerations. P. 19 Reporting of all survey data must be required and made available to the NRC and the public and placed on NRC's website for the public to access, just as the REMP is on an annual basis.

8. Prevention: Clearly the best way to avoid legacy sites is to prevent leakage from occurring in the first place and to catch any leaks when small before they grow to larger ones. This is especially important as reactors age because corrosion is not linear but instead follows what is known as a “bathtub curve.”

The wear-out phase begins approximately when a component is 20 years old. Maintenance can retard deterioration but it cannot prevent it – all metals/ materials corrode eventually, coating perforate, linings fail. Therefore robust inspection schedules should be required as reactors age, but the NRC does not require them.

Reactors are applying for license renewal to operate from 40-60 years. But the relicensing guidance NUREG 1801, M-34 simply requires a one-time inspection during the 10-years prior to re-licensing and another one-

time inspection during the 10-years after re-licensing. Cathodic protection should be required (NUREG 1801, M-28) but it is not – NRC again caved to NEI pressure not to do so. And as we have discussed, at 5, a monitoring well program is not required either – instead NRC relies on NEI's voluntary initiative.

Despite the epidemic of leaks already witnessed across the country; contamination far-in-excess than anticipated at decommissioned sites such as Yankee Atomic, Connecticut Yankee; on-site storage of spent fuel rods and so-called low level waste at sites because of the unavailability of appropriate offsite alternatives, NRC now proposes a rule that it knows is inadequate.

The NRC proposal reinforces the public perception that the Commission doesn't take radioactive leaks seriously. For example, a Tritium leak offsite of the San Onofre Nuclear Generating Station was so downplayed by the NRC's Region IV spokesperson that many were appalled: A San Diego County newspaper reported "A person could drink 130 gallons of the most radioactive water found under the San Onofre Nuclear Generating Station last week and still have no cause for health concern, Nuclear Regulatory Commission spokesman Victor Dricks said.

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The proposed rule would also require certain licensees to report additional details in their decommissioning cost estimates and amend some financial assurance mechanisms for decommissioning planning. A4NR agrees that it is vital that this is done correctly.

Decommissioning costs are currently underestimated. At ENVY, for example, independent estimates were approximately twice what Entergy put forward. Costs at Connecticut Yankee are now estimated about double what the utility anticipated.

A full report of the licensee's fund analysis, including full disclosure of assumptions (for example, assumed rate of inflation and yield) and amount set aside to date must be required to be posted annually on ADAMS. Lessons learned from the current review by the VT Legislature and PBS indicates that Entergy's assumptions are unrealistic.

All structures should be removed from reactor sites and all contamination remediated to make it possible for the site to be returned to full use. NRC in its rulemaking must make that plain.

Changes to 10 CFR § 50.82: A4NR joins Pilgrim Watch in supporting the requirement of providing additional details of decommissioned power reactor licensees in the PSDAR under proposed 10 CFR 50.82(a)(4)(i); and reporting to NRC the actual costs of decommissioning before license termination as proposed under 10 CFR 50.82(a)(8)(v) to enable NRC to apply the information in reviewing similar decommissioning activities that are planned or in progress. (FR 3322 Section L) This is conditioned upon required public disclosure of all yearly reports on decommissioning fund status and funds spent. (see FR 3843).

The public has the right to know the amount of funds accumulated to cover the current cost of managing spent fuel; the projected costs of spent fuel management until the Department of Energy takes title to the spent fuel; and the plan to obtain additional funds if the accumulated funds do not cover the projected costs to be identified. Reports should be submitted to NRC and made public on ADAMS.

Changes to 10 CFR § 72.30 (which apply to dry cask storage facilities): A4NR joins Pilgrim Watch support of additional requirements for decommissioning funding updates, especially given the inevitability of long-term onsite storage of spent fuel at reactor sites as they continue to be re-licensed to produce one-half again as much high-level radioactive waste. Yucca Mountain has not been approved and the federal government has no other realistic plan to establish a long term repository for nuclear waste. Even if Yucca Mountain is eventually opened, despite lengthy litigation from Nevada and states through which the waste will be transported, there is only enough space in the repository to store spent fuel produced by all nuclear plants in the U.S. through 2009 or perhaps 2011. At that point the repository will reach its capacity. As a result, waste will be stored on site or in a second, as yet unnamed repository that might be built sometime in the very distant future. Reprocessing is yet another pipe dream. Again separate funding accounts must be maintained.

Changes to 10 CFR § 72.50: While California currently has no “merchant owners of its nuclear reactors, we do join others in the Northeast in our concern that with increasing number of nuclear power plants operating as merchant plants especially in the New England areas, new requirements for license transfer applications to contain financial assurance pursuant to §72.30 would not apply. Under the old rules without this requirement, merchant plants would be left without sufficient funds for decommissioning.

Permissibility of “fee incentives” in 10 CFR § 171.11(b): “Fee incentives,” as permitted in 10 CFR § 171.11(b), cannot be used to induce licensees to characterize subsurface residual radioactivity while their facility is operating instead of waiting until the facility is in decommissioning. To use the exemption of annual fees as a “fee incentive” would go against Congress’ requirement that NRC collect user fees.

10 CFR Part 171 was promulgated as “necessary to comply with the statutory mandate of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).” COBRA requires the NRC to assess and collect annual charges from persons licensed by the Commission pursuant to the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) in an amount to approximate 33 percent of the Commission’s estimated budget. Because, “[t]he charges assessed pursuant to this authority shall be reasonably related to the regulatory service provided by the Commission and fairly reflect the cost to the Commission of providing such service.”

At the urging of Congress the NRC examined the impacts of the annual fee on power reactors with operating licenses to determine if exemptions should apply. The only exemption stated in the final rule is Section 171.11 and provides that:

[T]he holder of a license to operate a power reactor who believes that the annual fee is unfair or overly burdensome may apply to the Commission for partial relief from the annual fee. The Commission may grant such relief, if it is persuaded by the licensee that factors such as age and size of the plant and size and impact on its customer rate base substantially reduce the NRC’s regulatory costs for that plant and the benefits bestowed on that licensee below that of the other power reactors. Nevertheless, the agency’s intent is to grant exemptions sparingly.

The NRC specifically addresses the amount of annual fee to be collected stating that although the Budget Reconciliation Act provides the estimated amount of fees to be assessed is estimated to be equal to 33 percent of the costs incurred by the NRC (on its face creating a ceiling), “[t]he legislative history clearly indicates that Congress expected the NRC to charge the full amount authorized by the statute.”

Furthermore, the annual fee is “consistent with the President’s request to Congress that the NRC recover a far greater amount of its budget from user fees.” In the past 20 years, 10 CFR Part 171 has been amended to revise the fee schedules in response to COBRA amendments which has increased the total percentage of the Commission’s budget required to be collected from power reactor licensees by the NRC.

The NRC states that “[n]o public policy would be served by reducing a power reactor’s annual fee because a utility violated NRC’s requirements. Like Pilgrim Watch and Riverkeeper, A4NR is unwilling to attribute such an intent to Congress.”

Respectfully submitted,

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