

August 13, 2008

MEMORANDUM TO: Chairman Klein  
Commissioner Jaczko  
Commissioner Lyons  
Commissioner Svinicki

FROM: R. W. Borchardt */RA Bruce Mallett for/*  
Executive Director for Operations

SUBJECT: UPDATE ON IMPLEMENTATION OF THE LIMITED WORK  
AUTHORIZATION RULEMAKING

The purpose of this memorandum is to update the Commission on progress in implementing the changes introduced by the limited work authorization (LWA) rulemaking. The Commission issued Staff Requirements Memorandum (SRM) M070417B, "SECY-07-0030 - Final Rulemaking on Limited Work Authorizations," dated April 17, 2007, directing the NRC staff to keep the Commission informed on substantive policy or implementation questions related to the LWA rulemaking. The SRM may be found in the Agencywide Documents Access and Management System (ADAMS) No. ML071070361. The NRC staff provided information to the Commission by a memorandum dated February 6, 2008 (ADAMS No. ML080230417). Since the February 2008 update, the NRC staff has held two public meetings on implementation of the LWA rulemaking and has issued proposed interim staff guidance (ISG). The NRC staff is currently evaluating two implementation issues associated with the LWA rulemaking.

The first issue deals with the definition of "construction" set forth in Section 50.10, "License required; limited work authorization," of Title 10 of the *Code of Federal Regulations* (10 CFR 50.10). The NRC revised the definition of "construction" to exclude those activities that have no reasonable nexus to radiological health and safety or common defense and security (e.g., site clearing and grading). For the LWA final rulemaking, the scope of systems, structures, and components (SSCs) falling within the definition of "construction" was derived from the scope of SSCs that are included in the program for monitoring the effectiveness of maintenance at nuclear power plants, as defined in 10 CFR 50.65(b). The industry has raised several questions related to specific SSCs in response to the proposed ISG because of recent evaluations of site-specific construction plans. The NRC staff held a public meeting on June 12, 2008, and discussed examples, such as non-safety related circulating water system piping, intake structures, and cooling towers (ADAMS No. ML081720507). The Nuclear Energy Institute subsequently provided discussions of several examples in a letter dated July 11, 2008

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(ADAMS No. ML082120123). The NRC staff is evaluating the additional examples and will issue a supplement to the proposed ISG. The NRC staff will solicit public comments on the additional discussion and examples before finalizing the guidance in the ISG and, subsequently, in appropriate regulatory guides.

The staff's February 6, 2008, memorandum addresses a second issue, the environmental impacts of preconstruction activities that require permits from the U.S. Army Corps of Engineers (Corps). In a letter dated June 11, 2008 (ADAMS No. ML081550250), the NRC staff agreed that the memorandum of understanding (MOU) between the NRC and the Corps should be revised. The revisions will allow the Corps to be a cooperating agency under the lead of the NRC, in the development of environmental impact statements for activities related to combined license (COL) applications that also involve permits from the Corps. Based on discussions with the Corps, the NRC staff believes this approach will provide the necessary documentation to support NRC licensing decisions and Corps permitting decisions in the most efficient and timely manner possible. The Corps has indicated that participating as a cooperating agency will, in most cases, allow them to complete their permitting process earlier than if they performed an independent environmental review. The Corps provided a draft MOU to NRC staff on July 24, 2008. The NRC staff and the Corps are meeting to discuss the language of an interim MOU and resolve implementation issues. This approach may not completely resolve construction schedule issues for all COL applicants and, therefore, some applicants may need to work with the appropriate Corps District Office to develop alternative approaches or delay pre-construction activities.

The NRC staff is continuing its review of the LWA request for Southern Nuclear Operating Company's Vogtle site and recently received an LWA request as part of the COL application for Progress Energy's Levy County site. The number and scope of future LWA requests will depend in part on the resolution of the above issues.

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