



NUCLEAR ENERGY INSTITUTE

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Mr. Scott C. Flanders
Director, Division of Site and Environmental Reviews
Office of New Reactors
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Subject: Comments on NRC Environmental Protection Plan Template

Project Code: 689

Dear Mr. Flanders:

The Nuclear Energy Institute (NEI)¹ appreciated the opportunity to participate in the December 10, 2008 NRC public meeting on environmental issues for new reactors. One specific discussion focused on the draft Environmental Protection Plan (EPP) template for combined license (COL) holders (Adams Accession # ML083180815). As explained during the NRC public meeting, NEI has several significant concerns regarding the draft EPP template. This letter is a follow-up to those discussions and provides detailed comments for NRC staff consideration.

We understand that some, but not all, 10 CFR Part 50 reactor operating licenses have associated site-specific EPPs. For those facilities that have EPPs, some are in the form of license conditions or license attachments. In other cases, the EPP has been eliminated and EPP-related commitments are currently addressed by other means (e.g., site procedures). Accordingly, it does not appear that NRC regulations "require" EPPs, although the template essentially assumes such a requirement by creating a standardized EPP for COL holders that also allows for customized provisions. Because there is currently no "standard" EPP, it is difficult to gauge the extent to which the new template would impose new or expanded requirement upon COL holders. NEI believes the draft EPP template would, if adopted, impose new regulatory obligations. Some of those new requirements appear to

¹ The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, nuclear materials licensees, and other organizations and individuals involved in the nuclear energy industry.

be unnecessary for the protection of public health and safety and the environment and should therefore be modified or deleted from the final EPP.

Further, we believe the final version of the EPP template should provide a valid, clearly articulated legal and regulatory basis to support the proposed new requirements.² The NRC should also restructure the EPP to better ensure that the scope of requirements imposed is no broader than necessary and that the EPP provisions are consistent with the agency's authority. With regard to the underlying regulatory basis for the EPP, we also disagree with the document's reliance on 10 CFR 50.72(2)(xi) as the justification for what amounts to new generic requirements on COL holders. As explained below, we recommend the EPP template be modified to de-couple it from the reporting framework imposed by 10 CFR 50.72.

On this point, the template implies that Section 50.72(b)(2)(xi) already requires the proposed Endangered Species Act (ESA) reports and notifications set forth in the EPP. The language of that regulation, however, undercuts such an argument. In particular, EPP Sections 2.1 and 2.2 appear to impose reporting obligations broader than those currently required under Section 50.72(b)(2)(xi). Reinterpreting Section 50.72 to include these new reporting obligations would be inconsistent with the NRC's own processes. A successful rulemaking would be needed to expand Section 50.72(b)(2)(xi) to encompass the proposed ESA-related notifications set forth in the EPP.

Moreover, even assuming that Section 50.72 could be read as incorporating the ESA-related notifications addressed in the template, the EPP's proposed four-hour reporting schedule for all "events or situations" concerning aquatic or terrestrial resources is unnecessarily stringent. Compliance with those proposed time limits would be unreasonably onerous for licensees—particularly when the staff has provided no rationale for requiring a four-hour report in this situation. Additionally, we question the necessity of using the NRC's Emergency Notification System to report ESA-related events to the NRC Operations Center for non-exigent situations.

If the NRC has a demonstrated need for ESA-related information that is not currently being met, it would seem this need can be fully met by (1) licensee compliance with 10 CFR 50.72(b)(2)(xi) as written; and (2) NRC notification of other "events or situations" concerning aquatic and terrestrial resources not covered by Section 50.72(b)(2)(xi) *at the same time or after* the licensee reports such occurrences to the agency or agencies with jurisdiction to enforce the ESA. Further, if such ESA-related events do not require notification of the jurisdictional agency, it is not clear why licensees must report such events to the NRC. The confusion on this point underlies NEI's request that the staff clarify the regulatory basis for the EPP template.

² For example, the template should indicate what NRC obligation(s) under the Endangered Species Act necessitate development of a new standardized EPP. Absent this information, stakeholders cannot readily assess whether the template provides the fairest, most effective, and least burdensome method of enforcing that legal obligation.

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We would also appreciate an opportunity to discuss with the staff possible approaches other than license amendments for managing and maintaining EPP-related obligations, such as using licensee commitment management programs endorsed by the NRC. Such alternatives could prove equally effective and less time-consuming for both the affected licensee and the NRC staff.

As discussed in the attached comments, NEI urges the staff to modify the EPP template to articulate a valid legal and regulatory basis, to de-couple the new notification obligations from 10 CFR 50.72, to incorporate more reasonable notification time limits (if, indeed, any time limits are needed) and reporting format, and to require only those notifications that are coextensive with the licensee's obligation to report to the federal agency or agencies with jurisdiction to enforce the ESA, consistent with the NRC's statutory authority. Avoiding reliance on Section 50.72 as the ostensible regulatory basis for these new requirements also would preclude the need for a rulemaking to amend 10 CFR 50.72 to impose specific requirements pursuant to the ESA. As a practical matter, this approach would not constrain the NRC's ability to enforce applicable provisions of the ESA, to the extent the agency is required to do so. NRC licensees must comply with their license conditions and license attachments regardless of whether those conditions reference specific pre-existing regulatory requirements.

A written response to these comments by the staff would facilitate progress on this matter. Additionally, we would support a public meeting on the EPP template and understand that the staff plans to schedule such a meeting. NEI is ready and willing to work with the NRC staff to identify the most practical, effective and efficient way for the NRC to obtain from COL holders necessary ESA-related information without subjecting those licensees to unnecessarily burdensome or duplicative notification obligations.

Sincerely,



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