

March 26, 2010

MEMORANDUM TO: Michael D. Tschiltz, Deputy Director
Fuel Facility Licensing Directorate
Division of Fuel Cycle Safety
and Safeguards

THRU: Brian W. Smith, Chief **/RA/**
Fuel Facility Licensing Directorate
Uranium Enrichment Branch
Division of Fuel Cycle Safety
and Safeguards

FROM: Gregory C. Chapman, Health Physicist **/RA/** B. Smith for
Fuel Facility Licensing Directorate
Uranium Enrichment Branch
Division of Fuel Cycle Safety
and Safeguards

SUBJECT: MARCH 10, 2010, MEETING SUMMARY BETWEEN U.S.
NUCLEAR REGULATORY COMMISSION AND NUCLEAR
ENERGY INSTITUTE AND INDUSTRY REPRESENTATIVES
CONCERNING "AT-RISK" CHANGE IMPLEMENTATION

A public meeting notice for this meeting was issued on February 25, 2010, and was posted on the U.S. Nuclear Regulatory Commission's (NRC's) public Web page (NRC's Agencywide Document Access and Management Systems [ADAMS] accession number ML100481450). On March 10, 2010, the U.S. Nuclear Regulatory Commission staff met with representatives of the Nuclear Energy Institute, and fuel cycle licensees concerning "at-risk" facility change implementation for the change process described in Title 10 of the *Code of Federal Regulations* Part 70.72. This meeting facilitated discussion between the NRC and industry on this topic. The meeting summary is attached.

Enclosures:
Meeting Summary
Meeting Attendees
NRC Presentation Slides
LES Presentation Slides

CONTACT: Gregory C. Chapman, NMSS/FCSS
(301) 492-3106

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**Meeting Summary
March 10, 2010**

DATE: March 10, 2010

PLACE: U.S Nuclear Regulatory Commission Headquarters;
Executive Boulevard Building
Rockville, MD 20852

ATTENDEES: See Attachment 1

PURPOSE:

The public meeting was held to provide the U.S. Nuclear Regulatory Commission's (NRC's) position to industry regarding acceptable implementation of changes consistent with the change process discussed in Title 10 of the *Code of Federal Regulation* (10 CFR) 70.72. Specifically, concern had been raised as to what is considered "implementation" of a change as licensees have been observed to construct changes "at-risk" prior to obtaining NRC approval. This came to NRC attention due to building changes which, when previously approved, incorporated safety controls consistent with the licensee's application and Integrated Safety Analysis (ISA) Summary. Industry had requested an opportunity to discuss the issue with the NRC prior to publishing guidance.

Discussion:

The NRC developed a presentation (ML100610399) to communicate examples of situations involving the implementation of facility changes prior to NRC approval. The presentation was developed through discussion with the Office of the General Counsel (OGC). The NRC's position is that changes are allowed to be implemented that do not require the NRC's prior approval consistent with 10 CFR 70.72(c). Other changes require NRC approval prior to being implemented consistent with 10 CFR 70.72(d). Changes to the design of a building are considered to be made when constructing the design feature. However, a change involving a process or system that is a stand-alone construct is not considered to be "made" until tie-in of the system to make it active. This interpretation is consistent with construction/operating licenses for reactors in that the construction is part of the licensed activity whereas, during operation, the plant must operate to the approved license until such time as the change is approved by the NRC. NRC further noted that site development for structures requiring an amendment would require an exemption of the requirements of 10 CFR 70.72(c) if desired to occur prior to amendment approval.

Industry voiced several concerns regarding NRC's interpretation. This began with a presentation (ML100740436) by Perry Robinson of Louisiana Energy Services (LES) who cited several examples where construction activities had been allowed while license amendments were under review and stressed that implementation has historically been meant to state the beginning of licensed activities. A licensee utilizes configuration control and design control to assure NRC approval is received prior to beginning licensed activities. He further stressed that environmental concerns are the primary reason a licensee would seek regulatory oversight if questioning any activity and that, at the LES site, regulatory oversight was readily accommodated and a site resident had been requested to facilitate their construction activities. Mr. Robinson concluded that allowance of at-risk change implementation, in appropriate cases, can help achieve efficiencies in the construction process while maintaining safety. He also

stated the regulatory basis for the NRC position must be clearly articulated and any change in position must be applied prospectively only, using rulemaking and comment.

During the general discussion, the other attending industry and NRC representatives made the following points:

Tony Gody, NRC, stated that during inspections, if an inspection item was found to be inconsistent with an existing license but potentially consistent with an amendment request, then the item was considered an unresolved item to be followed up during a subsequent inspection. Also, if many amendment requests are in process, this places an undue burden on the individuals performing configuration management and design management as one can't be sure what will be approved and what will require modification or be disapproved. This could be a significant issue if one change that affects many subsequent changes is disapproved.

Several industry representatives stated that the NRC's position varies significantly from what has been allowed in the past. Specifically, through past practice, "implementation" occurs when licensed material is introduced to either the facility or process. Also, site preparation activities have not previously required an exemption request which could significantly delay construction activities. Additional concerns were voiced that waiting to receive NRC approval prior to acting on construction design changes would significantly delay schedules and increase costs.

Industry representatives felt that the positions presented by NRC needed additional clarification as words such as "structures" and "safety features" were utilized which may have multiple interpretations. Also, industry questioned what was considered tie-in of a stand-alone system as they often utilize blanks or valves to isolate ventilation and plumbing connections for newly constructed systems and processes. It was also questioned whether this meant electrical connections.

Industry pointed out that 10 CFR 70.72(b) does not distinguish between new versus existing licensees so any position should be consistently applied to both. Also, the NRC's position should be consistent between "site, structures, processes, systems, equipment, components, computer programs, and activities of personnel" as these are equally weighted in the regulation.

Industry also pointed out that operating fuel cycle facilities receive possession and use licenses vs. construction and operating licenses for the new fuel facilities so the desire for consistency between the two types of licensees needs to be carefully considered. For example, possession and use licensees have processes authorized and are not limited by location of processes or buildings.

Industry questioned whether or not this would be applied retroactively as previous actions would become contrary to regulatory guidance. NRC clarified that 10 CFR 70.72 only came into effect after the ISA summary was submitted, so there was no regulations relative to change processes prior to that event. (Note, according to 10 CFR 70.60, the requirements in 10 CFR 70.72 became effective at the time of submittal of the ISA Summary to the NRC for existing licensees. No comment was made as to whether any retroactive actions would be taken.)

Some confusion was repeatedly expressed as NRC's position was only relative to "at-risk" behavior when an amendment was required vs. all facility changes. NRC reiterated that these positions only applied when an amendment was required; otherwise, the licensee would be able to make the change without prior NRC approval consistent with 10 CFR 70.72.

Industry voiced an opinion that it appears as if the NRC is coming out with a strict regulatory interpretation that it did not previously have. The question was raised as to why this was occurring as there was no obvious problem that needed to be corrected (i.e., what is being “fixed” and what will be the benefit compared to what is already being done?).

Finally, it was brought up by both industry and NRC that defining “implementation” as it applies to 10 CFR 70.72 may be needed.

At the conclusion of the meeting, Michael Tschiltz of the NRC stated that, based on the different NRC and industry positions, additional clarity in the interpretation of rule is necessary.

Path Forward

The NRC staff will meet with OGC to consider industry input and the positions developed to determine the best way to address the issue (e.g., whether to develop Interim Staff Guidance, Regulatory Issue Summary, and/or revision to Regulatory Guide, “Guidance for Fuel Cycle Facility Change Processes”).

Meeting Attendees

Ty Naquin
Greg Chapman
Gerard Couture
Mohammed Shuaibi
Dan Stenger
Thomas Marnchin
Tony Gody
Jinnifer Wheeler
Tamar Cerafici
Charles Vaughan

Tracey Stokes
Gary Sanford
Charles Vaughan
Douglas Yates
Blake Purnell
Cathy Haney
Michael Tschiltz
Robert Link
Peter J. Miner

Calvin Manning
Perry Robinson
Jim Beardsley
Mark A. Scanlan
Kevin Morrissey
Patrick Castleman
Janet Schlueter
Scott Murray
Brian Smith