

August 2, 2010

Mr. Lawrence Potter
Independent Spent Fuel Storage
Installation Manager
Big Rock Point Restoration Site
10269 US-31 North
Charlevoix, MI 49720

SUBJECT: APPLICABILITY OF THE REVISED 10 CFR 73.55 RULE TO THE BIG ROCK
POINT RESTORATION SITE (TAC NO. L60619)

Dear Mr. Potter:

This letter is provided as follow up to the U. S. Nuclear Regulatory Commission's (NRC's July 20, 2010, webinar on the applicability of the power reactor security regulations to 10 CFR Part 50 licensees. The purpose of this letter is to provide clarification on this issue and notify licensees of additional actions that may be required. The revised Power Reactor Security Rule (74 *Federal Register* (FR) 13926) became effective on May 26, 2009, with compliance required by March 31, 2010. The requirements in 10 CFR 73.55 are referenced in the protection requirements (10 CFR 72.212(b)(5)) for general licensees issued under 10 CFR 72.210. The NRC recognizes that some Part 50 licensees (e.g., a Part 50 licensee with a facility undergoing decommissioning or a Part 50 licensee that has only a general licensed Independent Spent Fuel Storage Installations under 10 CFR 72.210 with no plant or a plant in decommissioned status) may not have recognized the applicability of the revised Power Reactor Security Rule to their facility. As a result, Part 50 licensees with facilities in decommissioning or decommissioned status may be out of compliance with the current 10 CFR 73.55 security requirements.

The NRC believes that there are currently no security or health and safety gaps at these facilities that may not be in compliance with the current 10 CFR 73.55 requirements. This is because the security programs at these facilities meet the baseline requirements of the previous version of 10 CFR 73.55 and also meet the requirements in subsequent security orders.

For facilities that may not be in compliance with the current 10 CFR 73.55 rule, the NRC will consider, as appropriate on a case-by-case basis, the use of enforcement discretion in accordance with Section VII.B.6 of the Enforcement Policy, "Violations Involving Special Circumstances" for a period of time until the exemption process is completed. The NRC will consider a licensee's demonstration of good-faith attempt to interpret and implement the new rule, the licensee's prompt corrective actions, and the NRC's recognition of ambiguity regarding the scope of the rule when applying this discretion. Potential findings that are apparent violations of orders or applicable regulations and not attributable to good-faith interpretation and implementation problems, potential noncompliances that involve willfulness or deliberately uncorrected deficiencies, or potential noncompliances that either were not attributable to good-faith interpretation and implementation problems or involved willfulness will be dispositioned through the normal enforcement processes.

Licensees need to evaluate the applicability of the current 10 CFR 73.55 rule to their specific facility and either make appropriate changes to the facility physical protection system or apply

for exemptions, as necessary. As a matter of clarity, the current 10 CFR 73.55 rule does not obviate licensees from implementing the Interim Compensatory Measures or Additional Security Measures (ASMs) that were imposed by the previously issued Security Orders. Therefore, the requirements in the ASMs remain in effect. Exemptions granted to requirements in the previous version of 10 CFR 73.55 automatically transfer provided the language in 10 CFR 73.55 has not changed substantively. Consistent with past practice, the NRC will consider allowing a licensee in a decommissioning status or a Part 50 licensee that has only a general licensed ISFSI under 10 CFR 72.210 with no plant or a plant in decommissioned status to decrease their security requirements through the exemption process. Licensees should also evaluate the need to revise their Physical Security Plan.

The NRC requires that licensees comply with the requirements in 10 CFR 73.55 or request exemptions from those requirements in 10 CFR 73.55 that the licensee believes are not applicable to their facility. Exemption requests, and if applicable, license amendment requests should provide the basis for the request. Responses and exemption requests shall be submitted within 120 days of the date of this letter to the Division of Spent Fuel Storage and Transportation, Deputy Director for Licensing and Inspection Directorate. The NRC will return previously-submitted exemption requests from affected licensees to allow licensees to fully address the July 20, 2010 webinar and this letter. Please contact Pamela Longmire, Ph.D. at 301-492-3562 with any questions.

Sincerely,

/RA/

Eric Benner, Chief, Licensing Branch
Division of Spent Fuel Storage and Transportation
Office of Nuclear Material Safety
and Safeguards

Docket Nos. : 50-155, 72-43

cc: Service List

for exemptions, as necessary. As a matter of clarity, the current 10 CFR 73.55 rule does not obviate licensees from implementing the Interim Compensatory Measures or Additional Security Measures (ASMs) that were imposed by the previously issued Security Orders. Therefore, the requirements in the ASMs remain in effect. Exemptions granted to requirements in the previous version of 10 CFR 73.55 automatically transfer provided the language in 10 CFR 73.55 has not changed substantively. Consistent with past practice, NRC will consider allowing a licensee in a decommissioning status or a Part 50 licensee that has only a general licensed ISFSI under 10 CFR 72.210 with no plant or a plant in decommissioned status to decrease their security requirements through the exemption process. Licensees should also evaluate the need to revise their Physical Security Plan.

The NRC requires that licensees comply with the requirements in 10 CFR 73.55 or request exemptions from those requirements in 10 CFR 73.55 that the licensee believes are not applicable to their facility. Exemption requests, and if applicable, license amendment requests should provide the basis for the request. Responses and exemption requests shall be submitted within 120 days of the date of this letter to the Division of Spent Fuel Storage and Transportation, Deputy Director for Licensing and Inspection Directorate. The NRC will return previously-submitted exemption requests from affected licensees to allow licensees to fully address the July 20, 2010 webinar and this letter. Please contact Pamela Longmire, Ph.D. at 301-492-3562 with any questions.

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