

November 30, 2010

MEMORANDUM FOR: R. W. Borchardt
Executive Director for Operations

Brooke Poole, Director
Office of Commission Appellate Adjudication

FROM: Annette L. Vietti-Cook, Secretary **/RA/**

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION SESSION, 10:00 A.M.,
TUESDAY, NOVEMBER 30, 2010, COMMISSIONERS'
CONFERENCE ROOM, ONE WHITE FLINT NORTH,
ROCKVILLE, MARYLAND (OPEN TO PUBLIC ATTENDANCE)

I. SECY-09-0042 – Final Rule: Decommissioning Planning (10 CFR Parts 20, 30, 40, 50, 70, And 72; RIN-3150-AI55)

The Commission approved a final rule amending Parts 20, 30, 40, 50, 70, and 72 of Title 10 of the Code of Federal Regulations to improve licensees' decommissioning planning activities during active facility operations, thereby reducing the likelihood that any currently operating facility will become a legacy site. The Commission voted to approve the publication and implementation of this final rule subject to the attached changes.

Following incorporation of these changes, the Federal Register notice should be reviewed by the Rulemaking, Directives, and Editing Branch in the Office of Administration and forwarded to the Office of the Secretary for signature and publication.

(EDO)

(SECY Suspense:

12/30/10)

No part of this rule or its accompanying guidance should be interpreted as altering the decision reached in the Commission's recently-issued SRM related to Revision 2 of NRC's guidance on decommissioning funding assurance for power reactors (Staff Requirements Memorandum, SECY-10-0082 – Explanation of Changes to Revision 2 to Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," October 25, 2010).

II. SECY-10-0124 – Tennessee Valley Authority (Watts Bar Nuclear Plant, Unit 2), Southern Alliance for Clean Energy's Petition for Interlocutory Review of LBP-10-12 (Denying SACE's Waiver Petition) (July 14, 2010)

The Commission approved a Memorandum and Order responding to a petition for interlocutory review by the Southern Alliance for Clean Energy of an Atomic Safety and Licensing Board decision, LBP-10-12, in the Watts Bar operating license proceeding. The Memorandum and Order denies the petition.

(Subsequently, on November 30, 2010, the Secretary signed the Memorandum and Order.)

III. SECY-10-0138 – Entergy Nuclear Operations, Inc. (Indian Point Nuclear Generating Units 2 and 3) Motions for Interlocutory Review by Staff and Applicant of LBP-10-13 (Contention Admissibility Decision)

The Commission¹ approved a Memorandum and Order responding to a petition for interlocutory review by Entergy Nuclear Operations, Inc. and the NRC Staff of LBP-10-13, which admitted, in part, new and amended contentions filed by intervenor the State of New York. The Memorandum and Order denies the petitions for interlocutory review of LBP-10-13 without prejudice.

(Subsequently, on November 30, 2010, the Secretary signed the Memorandum and Order.)

Attachment: Changes to the Final Rule in SECY-09-0042

cc: Chairman Jaczko
Commissioner Svinicki
Commissioner Apostolakis
Commissioner Magwood
Commissioner Ostendorff
OGC
CFO
OCA
OIG
OPA
Office Directors, Regions, ACRS, ASLBP (via E-Mail)
PDR

¹ Commissioner Apostolakis did not participate in this matter.

Changes to the Final Rule in SECY-09-0042

1. The implementation period for the rule should be extended to 18 months after the date of publication to allow sufficient time for staff to provide, and licensees to understand, the final version of the relevant guidance documents.
2. The staff should expeditiously republish the draft guidance related to surveys, subsurface contamination, and minimization of contamination for public comment and should hold a public workshop to explain it and answer questions.
4. Revise 20.1501 as follows to remove any ambiguity in proposed 20.1501(b), when compared to existing 20.2103(a). Corresponding changes to the Federal Register Notice would also be needed.

20.1501 (b) **Notwithstanding § 20.2103(a) of this part, R**ecords from surveys describing the location and amount of subsurface residual radioactivity identified at the site must be kept with records important for decommissioning, **and such records must be retained in accordance with §§ 30.35(g), 40.36(f), 50.75(g), 70.25(g), or 72.30(d), as applicable.**

5. In the statements of consideration for the rule and in the associated guidance, the staff should clarify further the circumstances under which licensees should conduct subsurface surveys to comply with 10 CFR 20.1501. The associated guidance should include the process, methods, and thresholds for determining when additional subsurface surveys are required. Staff should ensure licensee flexibility in complying with 10 CFR 20.1501, clarify that the rule does not require extensive site characterization, and explain that guidance documents do not impose regulatory requirements.
6. The following additional revisions should be made to Enclosure 1:
 - a. On page 106, line 3, the response to question G.25 should quantify the distance in centimeters; mostly likely intended to read, “typically in the top 15 centimeters”
 - b. On page 125, line 23, “to make” should be replaced with “to propose”
 - c. On page 144, lines 6 and 8, “5 days” should be replaced with “30 days”
 - d. On page 144, line 9, the word “quarter” should be replaced with “year”
 - e. On page 222, line 15, the word “radioactively” should be replaced with “radioactivity” to state, “subsurface material containing residual radioactivity”