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Licenses, Certifications, and Approvals for Material Licensees

Comment On: NRC-2010-0075-0005
Licenses, Certifications, and Approvals for Material Licensees

Document: NRC-2010-0075-DRAFT-0019
Comment on FR Doc # 2010-24581

Submitter Information

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Richland, WA, 99352

General Comment

Please see full statement in attached file.

I do not believe it is advisable to change the definition of "construction" and "commencement of construction" as proposed by the Nuclear Regulatory Commission and the nuclear industry. In my professional opinion, it was a mistake to change these definitions in the New Reactor Program in 2007.

Consider, for example, the Atomic Energy Act of 1954, which states,

"The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public."

The law says "health," not just radiological health. I am not aware of any formal process that determined the definition of the word "health" as used in the 1954 Act to mean only "radiological health." If you did formally redefine the word "health" sometime in the past, please provide citations.

This is only being done to avoid environmental reviews. No longer will legitimate reviews be done as required by NEPA.

In closing, this rule change is a bad idea. It hurts the credibility of the Nuclear Regulatory Commission, right at a time when the Commission needs to be gaining credibility. If the projected renaissance in U.S. nuclear power does occur, it is imperative that NRC be trusted to regulate the nuclear industry in a professional and responsible manner. Redefining words and using convoluted arguments to escape environmental requirements is beneath the NRC and it disrespects the professionals I worked with at NRC who have worked long and hard to build a strong and defensible environmental program. Do the right thing, withdraw this rule change, reverse the 2007 rule change, and start rebuilding your credibility and your capacity to conduct professional

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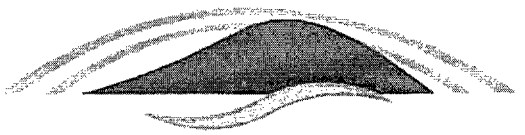
environmental assessments.

Please see my full statement in the attached file.

Attachments

NRC-2010-0075-DRAFT-0019.1: Comment on FR Doc # 2010-24581



NORTHWEST ANTHROPOLOGY

November 29, 2010

Secretary, Nuclear Regulatory Commission
Washington DC 20555-0001

Subject: Docket ID NRC-2010-0075

Dear Nuclear Regulatory Commission,

Thank you for the opportunity to comment on the proposed rule change for Licenses, Certifications, and Approvals for Material Licensees. I note, however, that I only learned about this proposed change by happenstance. I would normally expect to learn of such a wide-ranging impactful change to be widely publicized so that the professional environmental communities would know about the proposal and have an opportunity to comment. The lack of openness by NRC in keeping this proposal quiet is cause for concern and not consistent with President Obama's openness initiative.

Concerning the rule change in particular, I do not believe it is advisable to change the definition of "construction" and "commencement of construction" as proposed by the Nuclear Regulatory Commission and the nuclear industry. In my professional opinion, it was a mistake to change these definitions in the New Reactor Program in 2007. My recommendation is to scrap this rule change and instead spend your time reversing the changes made in 2007. My reasoning is provided below.

By way of background, from 2005 through 2008, I was part of a contractor environmental team that prepared environmental impact statements (EIS) for the Nuclear Regulatory Commission New Reactor Program. I was directly or indirectly involved in the initial dozen or so applications submitted by industry to construct a new power reactor.

The NRC environmental team used our team of professionals to review the applicant's environmental reports and do whatever was required to complete the many assessments required to complete an EIS. The NRC staff required defensible professional assessments from us in each required subject area. In my areas, cultural resources and tribal relations, I was part of an integrated team, had access to the same budget as every other discipline if needed. I was never really pushed to arrive at any pre-determined conclusion; there was pressure to be pragmatic, but I always had the freedom to state things as I saw them.

These EISs were well done and did a reasonable job identifying potential issues and either resolving them with the applicant or proposing ways to mitigate potential effects. We were successful, in my opinion, because the NRC environmental team was composed of seasoned environmental professionals who operated in an integrated fashion, that is, they operated as a team. They had longevity with the government and well understood the regulatory context in which they worked. I have worked with several other agencies during my 35-year career and I would put the NRC organization that I worked with at the top.

In 2007, when the proposed new rule was proposed and issued, the assessment process was thrown into disarray. We were no longer to conduct assessments of the entire project and project area, as we always had; now we could only assess the parts of construction that involved radiological safety. The explanation was that something along the line that under the Atomic Energy Act, NRC was only authorized to regulate activities that have to do with radiological health and safety or common defense and security. The explanation did not make sense then and it doesn't make sense now.

Particularly disturbing was the lack of openness of the 2007 rule change. I believe the NRC Office of General Counsel was instructed by Commission members to be thorough in their outreach efforts; that OGC should be sure to involve appropriate agencies and stakeholder groups. As far as I know, only the Council on Environmental Quality and the Environmental Protection Agency were contacted. Other organizations, such as the Advisory Council on Historic Preservation should have been contacted and afforded an opportunity to comment. Outreach efforts were so minimal that one of the few comments received was from a NRC employee who felt that some comment had to be made concerning the environmental consequences of the proposed rule changes.

Also disturbing is the fact that NRC has moved forward redefining the meaning of the words "construction" and "commencement of construction" against the recommendation of its own environmental staff. It is one thing to move forward on a proposal from industry, but once your professional staff inform you that the change is ill-advised, how can you continue forward and actually implement the change? Why even have a professional staff? If you decide to continue forward with making the new changes, I think it is your responsibility, at a minimum, to solicit the professional opinions of your own professional staff, ask them how it has been going at the New Reactor Program, and inform other agencies and stakeholders about what they say.

Concerning the new rule change, I say do not make the changes. Redefining the terms "construction" and "commencement of construction" to mean only activities that implicate radiological health and safety or common defense and security considerations is contrary to the National Environmental Policy Act. I suppose you can call a project anything you want, but the fact remains, the NRC is licensing an applicant to construct and operate a facility and that is the action that needs to be reviewed under NEPA. Not partially, not in a segmented fashion, but rather in a comprehensive and coordinated

fashion. If you do not know what this means, then I suggest you consult your professional environmental staff, not the Office of Legal Counsel.

Consider, for example, the Atomic Energy Act of 1954, which states,

> "The processing and utilization of source, byproduct, and special nuclear material must be regulated in the national interest and in order to provide for the common defense and security and to protect the health and safety of the public."

The Act says "health," not just radiological health. I am not aware of any formal process that determined the definition of the word "health" as used in the 1954 Act to mean only "radiological health." If you did formally redefine the word "health" sometime in the past, please provide citations.

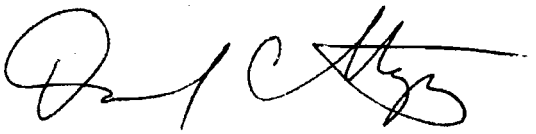
The definition of health is important because ignoring NRC's responsibility to conduct appropriate environmental assessments could lead to significant health impacts to the public. For example, if important environmental and cultural resources and landscapes are adversely affected during the initial construction of a licensed nuclear facility, a local group dependent on that resource or landscape could suffer serious consequences. American Indian Tribes in particular are impacted when sacred areas, burial grounds, and other important places and resources are disturbed. NRC needs to be aware of these situations so that impacts can be avoided, and if not avoided, mitigated.

In 2009, the nation learned about the types of problems that can result when an agency gets to close to the industry that it regulates. I refer to the Minerals Management Service and the conflict of interest issues that emerged during the 2009 Gulf Coast disaster and as documented in reports by the General Accounting Office. This proposed NRC rule change originated from the nuclear industry and was not , and I am sure is not supported by NRC and contractor environmental and cultural resource professional staff.

This proposed rule change indicates to me that NRC is implementing the environmental policies of the previous presidential administration. That approach, making policy based on politics rather than facts and experience, has been rejected by the nation. No longer should environmental assessments be conducted by an upper management that dictates answers to professional scientists and engineers. No longer shall environmental assessments be conducted by unqualified people who claim no environmental effects from an action, but fail to provide the logic and data that led to that conclusion. No longer shall agencies use their legal departments to present convoluted logic and ill-founded arguments to explain why comprehensive environmental assessments do not have to be conducted as required by law. NRC needs to get with the new environmental program and spirit of openness that President Obama has promised the country.

In closing, this rule change is a bad idea. It hurts the credibility of the Nuclear Regulatory Commission, right at a time when the Commission needs to be gaining credibility. If the projected renaissance in U.S. nuclear power does occur, it is imperative that NRC be trusted to regulate the nuclear industry in a professional and responsible manner. Redefining words and using convoluted arguments to escape environmental requirements is beneath the NRC and it disrespects the professionals I worked with at NRC who have worked long and hard to build a strong and defensible environmental program. Do the right thing, withdraw this rule change, reverse the 2007 rule change, and start rebuilding your credibility and your capacity to conduct professional environmental assessments.

Sincerely,



Darby C. Stapp, PhD, RPA
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Rulemaking Comments

From: Gallagher, Carol
Sent: Tuesday, November 30, 2010 4:28 PM
To: Rulemaking Comments
Subject: Comment on Proposed Rule - Licenses, Certificatins and Approvals for Material Licenses
Attachments: NRC-2010-0075-DRAFT-0019.pdf

Van,

Attached for docketing is a comment on the above noted proposed rule (3150-AI79) that I received via the regulations.gov website on 11/29/10.

Thanks,
Carol

Received: from HQCLSTR01.nrc.gov ([148.184.44.76]) by TWMS01.nrc.gov
([148.184.200.145]) with mapi; Tue, 30 Nov 2010 16:28:23 -0500
Content-Type: application/ms-tnef; name="winmail.dat"
Content-Transfer-Encoding: binary
From: "Gallagher, Carol" <Carol.Gallagher@nrc.gov>
To: Rulemaking Comments <Rulemaking.Comments@nrc.gov>
Date: Tue, 30 Nov 2010 16:27:42 -0500
Subject: Comment on Proposed Rule - Licenses, Certificatins and Approvals
for Material Licenses
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