RECORD #111

TITLE: Response ... Regarding Deletion of NRC Water Quality Requirements from Maine Yankee

FICHE: 04698-257

UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

EW 359
0782/80
04698-257

MAR 21 1980

MEMORANDUM FOR: Commissioner Bradford

FROM: Howard K. Shapar, Executive Legal Director
Harold R. Denton, Director, Office of Nuclear Reactor Regulation

THRU: William J. Dircks, Acting Executive Director for Operations

SUBJECT: RESPONSE TO INQUIRY REGARDING DELETION OF NRC WATER QUALITY REQUIREMENTS FROM MAINE YANKEE - STAFF NOTES OF FEBRUARY 19, 1980

Q.1 Was Commission or EDO approval sought for this major policy decision and, if not, why not?

A.1 Commission or EDO approval was not sought on the deletion of limiting conditions of operation as to water quality requirements and other aquatic monitoring requirements from existing construction permits and operating licenses. The reason approval was not sought was that the action in question involved the implementation of a legal position set forth in a series of Atomic Safety and Licensing Appeal Board (Appeal Board) decisions.[1/] It was not believed that the implementation raised policy questions meriting Commission consideration.

In these decisions, the Appeal Board, after an exhaustive analysis of the legislative history of the Federal Water Pollution Control Act Amendments of 1972 (Yellow Creek, 8 NRC at 706-12; H. B. Robinson, slip op. at 8-9), concluded that by virtue of Section 511(c)(2) of

---

1/ Public Service Company of New Hampshire (Seabrook Station, Units 1 and 2), ALAB-366, 5 NRC 39, 45-58 (1977), affirmed CLI-77-8, 5 NRC 503, 508-9 (1977); see also CLI-78-1, 7 NRC 1, 24-26 (1978); Tennessee Valley Authority (Yellow Creek Nuclear Plant, Units 1 and 2), ALAB-515, 8 NRC 702 (1978); Philadelphia Electric Co (Peach Bottom Atomic Power Station, Unit 3), ALAB-532, 9 NRC 279 (1970); and Carolina Power & Light Co. (H.B. Robinson, Unit No. 2), ALAB-569, ___ NRC ___ (October 31, 1979).

CONTACT:
S.Treby, OELD
49-27881

R.Samworth, NRR
49-27903

that Act, EPA, or those states to whom permitting authority has been delegated, had been given exclusive responsibility for water quality protection and that the regulation of water quality lies in the NPDES permit system. The NRC's role in the water quality area is limited, according to these decisions, to the weighing of aquatic impacts as part of its NEPA cost-benefit balance in its licensing decision. That role does not include any NRC right for "undertaking its own analysis and reaching its own conclusions on water quality issues already decided by EPA" (8 NRC at 715) or including any limiting conditions of operation or monitoring requirements of its own in the license for the protection of the aquatic environment. (8 NRC at 713-174)[2/]

Since Seabrook, the Appeal Board has discussed this subject three times. See Yellow Creek, Peach Bottom and H. B. Robinson. The Commission did not choose to review any of these decisions.

The subject of the treatment of conditions to protect water quality in environmental technical specifications previously has been brought before the Commission by the Staff. See, SECY 77-450, dated August 22, 1977. At that time, by means of a Staff informational paper and subsequent briefing to the Commission, the Commission was advised of staff actions taken to resolve duplicative regulatory rules of the NRC and EPA with regard to water quality issues. With Commission concurrence, the Staff adopted a policy which provided, inter alia, that in future licensing actions, water quality parameters would no longer be included in environmental technical specifications as limiting conditions to an NRC operating license. However, NRC would continue to require aquatic monitoring programs and NRC notification if the NPDES permit limits were exceeded or if the limits were revised. Further, the Office of Inspection and Enforcement would normally limit their inspection and enforcement activities only to insuring compliance with the monitoring or reporting requirements specified in the environmental technical specifications. Subsequently, the Yellow Creek decision was issued which held as a matter of law that the NRC did not have the requisite responsibilities in the water quality area. Implementation of this holding required modification of the Staff policy to the extent that (1) monitoring requirements could no longer be imposed in NRC licenses and (2) the policy was applicable not only to future licensing actions but also to existing licenses.

2/ The question of whether NRC has jurisdiction under NEPA to impose conditions protecting the aquatic environment where EPA or a permitting state has not issued an NPDES, or the NPDES permit is not effective because of appeal proceedings, is currently pending before the Commission in its review of ALAB-487 (Indian Point).

The Office of Nuclear Reactor Regulation amended the technical specifications for the Maine Yankee facility[3/] and the Vermont Yankee facility[4/] by removing the conditions relating to water quality matters. Prior to removal of the conditions from the Maine Yankee technical specifications, the Staff reviewed the NPDES permit and determined that all the water quality conditions in the NRC technical specifications were also conditions in the NPDES permit. Therefore, the conditions in the NRC license were, in fact, duplicative of ones in the NPDES permit and removal from the NRC license does not affect Maine Yankee's obligation to meet these requirements contained in the NPDES permit. In the case of Vermont Yankee, the Staff's review indicated that with the exception of limiting conditions of operation for chlorine and river flow, the NRC environmental technical specifications were duplicative of those in the NPDES permit. The differences have previously been discussed among representatives of the NRC, EPA, U.S. Fish and Wildlife Service, the States of Vermont and New Hampshire, the licensee Vermont Yankee and its consultant, Aquatec, in a meeting to discuss Vermont Yankee's renewing the NPDES Permit.

In sum, the Staff did not view the removal of the water quality conditions and monitoring requirements from NRC licenses as a matter requiring EDO or Commission approval, but rather merely the implementation of the holdings of a series of Appeal Board decisions - subject to Commission review - which held as a matter of law (based on a detailed analysis of legislative history to determine congressional intent) that the NRC did not have the requisite authority to impose conditions of operation including monitoring requirements in the water quality area. Further, the Commission had the opportunity to review each of these Appeal Board decisions but remained silent.

Q.2 Is staff treating these deletions as an Operating License amendment? If not, have EPA and relevant state and local governments nevertheless been notified of the staff's actions and given an opportunity to comment?

A.2 Yes. The deletions of conditions relating to water quality from technical specifications are considered license amendments. They are

---

3/ Also included in this action was a Staff-proposed new environmental technical specification which would require reports which are designed to provide the Staff with current information on potential environmental problems at the station. See February 8, 1980 letter to Robert H. Groce from Robert W. Reid and enclosures (copy attached).

4/ See February 22, 1980 letter to Robert L. Smith from Thomas A. Ippolito and enclosures (copy attached). As in the case of Maine Yankee, also included in this action was a Staff-proposed new environmental technical specification for certain reporting requirements.

noticed in the Federal Register after they have been effected. These changes are considered ministerial actions required as a matter of law and therefore no environmental impact assessment need be prepared as a condition precedent to taking the action. A subsequent environmental impact appraisal will be prepared to determine what, if any, impact the removal of these conditions will have on the original cost-benefit balance.

Q.3 What plants will be affected by the Staff's proposed actions? What is the schedule? For each case, are the requirements different from the NPDES requirements?

A.3 The Staff's current practice for writing environmental technical specifications (ETS) for new plants (North Anna 2, Salem 2, Sequoyah, Diablo Canyon, Zimmer, Watts Bar and McGuire), is to rely on the NPDES Permit for water quality requirements. Appropriate reporting and administrative requirements are included for the purpose of keeping NRC aware of aquatic environmental problems at licensed facilities.

All previously licensed operating plants having ETS will be affected as a consequence of the Appeal Board decisions. In the past, NRR has made extensive revisions to requirements on water quality limiting conditions of operations (LCOs) at operating plants upon application by licensees. These revisions were based upon NRC's independent technical reviews to assure that the revisions would not significantly affect the environment. The effect of the Appeal Board decisions is that, as noted in A.2 above, the Staff no longer will conduct its own independent technical review as a condition precedent to making the revisions, but will delete the conditions and monitoring requirements relating to water quality as a matter of law.

Four stations (Maine Yankee, Vermont Yankee, Fort Calhoun and St. Lucie) which had requested license amendments to delete all water quality LCOs from their ETS have or are being affected by Staff action implementating the holdings of the Appeal Board decisions. Of these, Maine Yankee and Vermont Yankee have already been notified that water quality LCOs have been deleted and that they will be issued new ETS which rely on the NPDES permit. For the other two, Fort Calhoun and St. Lucie, the Staff is in the process of revising the ETS.

The schedule for deletion of the water quality requirements for other operating plants for which license amendment requests have not yet been filed is dependent on the availability of manpower and on the resolution of certain prerequisite activities.[5/] Revision of Appendix

---

5/ See Memorandum for Howard K. Shapar from Harold R. Denton dated March 3, 1980 (copy attached).

B-ETS to substitute reporting requirements and administrative controls for aquatic requirements must not affect the radiological sections contained within Appendix B. Thus, careful review of each licensing action is necessary. The radiological sections are in the process of being moved to Appendix A of the OL in conjunction with implementation of 10 CFR 50 Appendix I. Rather than revise Appendix B twice, it is preferable to coordinate nonradiological revisions with those pending for the radiological portions. Further, the Environmental Specialists Branch is coordinating actions to delete NRC water quality requirements with EPA and the permitting States, where appropriate. NRC has worked closely with EPA on water quality issues under the Second Memorandum of Understanding since December 1975 and will continue to do so on future CP and OL reviews.

We have provided, in Table 1, a list of all operating plants with a brief comparison of the requirements of the ETS and of the NPDES permit. The table shows that there are 48 sites with 70 licensed units. Of the 42 sites with ETS, 31 have differences between the ETS and NPDES permit. Prior to making deletions on plants which have differences between the ETS and NPDES permit, the Staff will discuss the action with the NPDES permitting authority.

Edward H. Shapar
Executive Legal Director

Original Signed by
H. R. Denton

Harold R. Denton, Director
Office of Nuclear Reactor
Regulation

cc: Chairman Ahearne
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Hendrie
Samuel J. Chilk
Ed Hanrahan
Len Bickwit

Distribution:
Docket Files
NRC PDR
LPDR
NRR Rdg.
OELD
WDircks
KCornell
TRehm
HShapar
HDenton
ECase
HBerkow/Russell
DMuller
DRoss
RMattson
MGroff (08484)
PLaGrange
GErtter

☆ See previous concurrence

OFFICE	ELD	DSE:ET:ESB	DSE:ET:ESB	DSE:ET	DSE	NRR
SURNAME	Hereby:ar HShapar	RESanworth	GLear	MLErnst	DRMuller	
DATE	3/19/80	3/ /80	3/ /80	3/ /80	3/ /80	3/19/80

TABLE 1

COMPARISON OF ENVIRONMENTAL TECHNICAL SPECIFICATION REQUIREMENTS WITH NPDES PERMIT REQUIREMENTS AT OPERATING PLANTS

PLANT NAME	THERMAL LIMITS	BIOCIDE LIMITS	AQUATIC MONITORING
Arkansas 1 & 2	X	X	X
Beaver Valley 1	X	0	X
Big Rock Point	NO ENVIRONMENTAL TECHNICAL SPECIFICATION		
Browns Ferry 1, 2 & 3	0	X	X
Brunswick 1 & 2	0	0	0
Calvert Cliffs 1 & 2	0	0	0
Cook 1 & 2	X	X	X
Cooper	X	X	X
Crystal River 3	0	0	0
Davis-Besse 1	X	0	X
Dresden 1, 2 & 3	NO ENVIRONMENTAL TECHNICAL SPECIFICATION		
Duane Arnold	0	X	0
Farley 1	X	0	X
Fitzpatrick	0	0	X
Ft. Calhoun 1	0	0	0
Ft. St. Vrain	X	X	X
Ginna	NO ENVIRONMENTAL TECHNICAL SPECIFICATION		
Haddam Neck	X	X	X
Hatch 1 & 2	0	0	X
Humbolt Bay	NO ENVIRONMENTAL TECHNICAL SPECIFICATION		
Indian Point, 1, 2 & 3	0	0	0
Kewaunee	X	X	X
LaCrosse	NO ENVIRONMENTAL TECHNICAL SPECIFICATION		
Maine Yankee	0	0	0

X - indicates a difference between the environmental technical specification and the NPDES permit requirements

0 - indicates that the environmental technical specification and the NPDES permit requirements are essentially the same or that the environmental technical specification does not contain limits

TABLE 1 (con't)

PLANT NAME	THERMAL LIMITS	BIOCIDE LIMITS	AQUATIC MONITORING
Millstone 1 & 2	X	0	0
Monticello	0	0	0
Nine Mile Point 1	0	0	0
North Anna 1	0	0	X
Oconee 1, 2 & 3	0	0	X
Oyster Creek 1	0	0	X
Palisades	0	X	0
Peach Bottom 2 & 3	0	0	X
Pilgrim 1	0	0	X
Point Beach 1 & 2	X	X	0
Prairie Island 1 & 2	X	0	X
Quad Cities 1 & 2	0	0	X
Rancho Seco 1	0	0	0
Robinson 2	0	0	0
Salem 1	0	0	0
San Onofre 1	0	0	X
St. Lucie 1	X	0	X
Surry 1 & 2	X	0	0
Three Mile Island 1 & 2	X	X	X
Trojan	0	0	X
Turkey Point 3 & 4	0	X	X
Vermont Yankee 1	0	X	0
Yankee Rowe 1	NO ENVIRONMENTAL TECHNICAL SPECIFICATION		
Zion 1 & 2	0	X	0

X - indicates a difference between the environmental technical specification and the NPDES permit requirements

0 - indicates that the environmental technical specification and the NPDES permit requirements are essentially the same or that the environmental technical specification does not contain limits

NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

OFFICE OF THE COMMISSIONER

February 29, 1980

MEMO TO: William J. Dircks
Acting Executive Director
for Operations

FROM: Peter A. Bradford

SUBJECT: DELETION OF NRC WATER QUALITY REQUIREMENTS FROM MAINE YANKEE - STAFF NOTES OF FEBRUARY 19, 1980

I understand the staff has deleted water quality requirements from Maine Yankee's Operating License and similar actions on other applications are imminent. I would like the following questions answered before further deletions are made:

1. Was Commission or EDO approval sought for this major policy decision and, if not, why not? (See 12/7/79 memo to Denton from Shapar.)

2. Is staff treating these deletions as an Operating License amendment? If not, have EPA and relevant state and local governments nevertheless been notified of the staff's actions and given an opportunity to comment?

3. What plants will be affected by the staff's proposed actions? What is the schedule? For each case, are the NRC requirements different from the NPDES requirements?

cc: Chairman Ahearne
Commissioner Gilinsky
Commissioner Kennedy
Commissioner Hendrie
Samuel J. Chilk
Ed Hanrahan
Len Bickwit

Rec'd Off. EDO
Date...3/4/80
Time.....

In my view, the law established in these Appeal Board decisions is clear. The NRC's role in the water quality area is limited to the weighing of aquatic impacts as part of its NEPA cost-benefit balance in its licensing decision. That role does not extend to including any conditions of its own in the license for the protection of the aquatic environment. Rather, EPA or those states to whom permitting authority has been delegated have been given exclusive responsibility for water quality protection and the regulation of water quality lies in the NPDES permit system.

The Staff, particularly the Environmental Specialists Branch, has been considering a course of action for applying the Appeal Board's Yellow Creek Decision to both future and past licensing proceedings. A proposed Commission paper was prepared and circulated for comment. However, in May 1979, action on the paper was deferred, in large part due to comments from OELD. Action on the paper was subsequently resumed and substantial input provided by OELD. In October, 1979, a task force was established to consider alternative measures for achieving consistency with the requirements of Section 511(c)2 and to propose revised aquatic impact review procedures. The task force is currently working on the matter.

While I believe the Task Force should continue its deliberation and develop procedures for each type of licensing action (early site reviews, construction permit reviews, operating licenses reviews, alternative site reviews) and for obtaining input from EPA and State permitting agencies, I also believe prompt action should be taken with regard to existing licenses which contain limiting conditions of operation with regard to aquatic matters.

As indicated above, operating conditions on non-radiological aquatic matters and other non-radiological aquatic monitoring requirements are now the exclusive concern of EPA and permitting states and are not the responsibility of the NRC. Accordingly, I recommend that, for those existing licenses where the facility holds an effective NPDES permit, existing limiting conditions of operation or other non-radiological aquatic monitoring requirements be deleted as a matter of law. Since the deletion of these conditions would be a ministerial action required as a matter of law, no environmental impact assessment need be prepared as a condition precedent to taking the action. However, I do believe that it is appropriate for your staff to prepare a subsequent environmental impact assessment to determine what, if any, impact the removal of these conditions will have on the original cost-benefit balance.

DISTRIBUTION:
HRS/TPR/ESC
GCunningham
SATreby
ELD Rdg. File
SAT-Chron
HRS-Chron

Howard K. Shapar
Executive Legal Director

OFFICE ➤	OELD	OELD	OELD	OELD		
SURNAME ➤	SATreby	ESChristenbury	GCunningham	HKShapar		
DATE ➤	12/06/79	12/7/79	12/ /79	12/7/79		