



NUCLEAR ENERGY INSTITUTE

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DIRECTOR
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April 15, 2011

Ms. Vonna Ordaz
Director
Division of Spent Fuel Storage and Transportation
Office of Nuclear Materials Safety and Safeguard
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: NEI Position Regarding the Stack-up Configuration for Dry Storage Casks

Project Number: 689

Dear Ms. Ordaz:

NEI has reviewed your memorandum to Anne Boland (NMSS Region 3) dated February 25, 2011. In this memorandum, you responded to the Region 3 Technical Assistance Request (TAR) dated October 29, 2010, documenting a position regarding the regulatory requirements for a free-standing stack-up configuration. A stack-up configuration is where the transfer cask is placed on top of the storage cask for the operation of transferring the canister into the storage cask.

In the TAR response, you stated that a free-standing stack-up configuration is not allowed without prior NRC review and approval of the supporting analysis. The response also indicated that the review of this analysis would be required under 10 CFR Part 72.

We believe that the position documented in the February 25, 2011 memorandum has generic implications, and that it is inconsistent with the NRC's previously established regulatory position. NEI is concerned that this is a fundamental change in position, which was implemented through inspection guidance as opposed to applying a more appropriate and structured regulatory process.

The attachment to this letter summarizes the NRC's previously established regulatory position and explains NEI's basis for concluding that the position described in the February 25, 2011 memorandum is inconsistent with the previous position. In summary, NEI believes that this inconsistency occurs in two general areas: 1) applicability of 10 CFR Part 50 and 10 CFR Part 72 to loading, unloading and handling operations performed inside buildings governed by 10 CFR Part 50;

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and 2) the authority granted to licensees to make changes to the cask or facility FSAR without prior NRC review and approval pursuant to 10 CFR 50.59 and 10 CFR 72.48.

We believe that, for casks licensed under the general license provision of 10 CFR Part 72, the acceptability of loading, unloading and handling in facilities governed by 10 CFR Part 50 is appropriately addressed by the licensee under their 10 CFR Part 50 facility license. This is consistent with the intent of the August 17, 1990 amendment to 10 CFR Part 72 to provide storage under a general license. Analyses performed by the licensee to justify acceptability of loading, unloading and handling would be reviewed by the licensee pursuant to 10 CFR 50.59 to determine whether prior NRC review and approval is required under 10 CFR Part 50. Prior review and approval by the NRC of the licensee's analyses justifying acceptability of loading, unloading and handling is not required under 10 CFR Part 72. If the loading, unloading, or handling operation necessitates a change to the cask FSAR, then a review pursuant to 10CFR72.48 would be performed by the licensee or CoC holder to determine whether the change requires prior NRC review and approval under 10 CFR Part 72.

We believe that the attempt to establish a new regulatory position through inspection guidance has reduced regulatory stability and predictability. This uncertainty has already begun to have a significant impact on licensees currently engaged in on-going dry storage cask loadings, as well as those that are preparing to initiate dry storage cask loadings. Removal of used fuel from reactor pools could potentially be delayed, and space constraints in the pools could be further exacerbated. Furthermore, the position described in the memorandum dated February 25, 2011 would place a significant burden on general licensees without a commensurate safety benefit given that the safety of the stack-up configuration is already being appropriately evaluated by licensees using established methods.

We are requesting clarification of the TAR response, any associated instructions to inspectors and other follow-on documents to be consistent with the previously established regulatory approach. NEI believes that the previously established regulatory approach is sound; however, the NRC, if it so wishes, does have the capability, through 10 CFR 72.62 or rulemaking, to compel CoC holders to submit these analyses for prior review and approval. Conversely, a change in NRC position through inspection guidance circumvents the established NRC processes for making such a change in position.

A public meeting between the NRC (including NMSS/SFST and NRR/DORL) and the industry has been scheduled for April 28, 2011 to discuss the NRC's position described in the memorandum dated February 25, 2011 and NEI's position as described in the attachment to this letter. We appreciate the NRC's willingness to work with industry to identify whether a change in position is necessary, and if so, create a more workable regulatory approach for both the NRC and the industry through an appropriate regulatory process.

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NEI has reviewed the letter from Southern Nuclear Company to the NRC, written by M.J. Ajluni and dated April 8, 2011. In this letter, Southern Nuclear Company states their position on the NRC's memorandum dated February 25, 2011. NEI's position on the generic implications of the NRC's February 25, 2011 memorandum is consistent with the site-specific position of Southern Nuclear Company.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney McCullum", written in a cursive style.

Rodney McCullum

Attachment

c: Mr. Joseph Giitter, NRR/DORL
Mr. Harold Chernoff, NRR/DORL
Mr. Douglas Weaver, NMSS/DSFST
Mr. Eric Benner, NMSS/DSFST
NEI Dry Storage Task Force