

December 20, 2012

EGM-12-002

MEMORANDUM TO: Eric J. Leeds, Director, Office of Nuclear Reactor Regulation
Brian W. Sheron, Director, Office of Nuclear Regulatory Research
Cathy Haney, Director, Office of Nuclear Material Safety
and Safeguards
Mark A. Satorius, Director, Office of Federal and State Materials
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James T. Wiggins, Director, Office of Nuclear Security
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Glenn M. Tracy, Director, Office of New Reactors
William M. Dean, Regional Administrator, Region I
Victor M. McCree, Regional Administrator, Region II
Chuck Casto, Regional Administrator, Region III
Elmo E. Collins, Regional Administrator, Region IV

FROM: Roy P. Zimmerman, Director */RA/*
Office of Enforcement

SUBJECT: ENFORCEMENT GUIDANCE MEMORANDUM 12-002
DISPOSITIONING VIOLATIONS OF NUCLEAR REGULATORY
COMMISSION REQUIREMENTS IMPLEMENTING THE
DECOMMISSIONING PLANNING RULE

PURPOSE:

The purpose of this enforcement guidance memorandum (EGM) is to provide guidance for the disposition of violations of U.S. Nuclear Regulatory Commission (NRC) requirements for implementing the monitoring and surveillance requirements of the Decommissioning Planning Rule (DPR).

BACKGROUND:

In 1997, the NRC issued the license termination rule (LTR) that defined dose-based criteria for license termination. In 2000, the Commission directed the staff to review implementation of the LTR. In SECY-03-0069, the staff provided its response and recommended several actions. One of those actions was proposed rulemaking to reduce the likelihood of new legacy sites – those with insufficient resources to remediate to license termination criteria. In SRM-SECY-03-0069, the Commission approved the proposed rulemaking. In January 2008, the NRC issued

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the draft rule for comment. On June 17, 2011, the Commission published in the *Federal Register* (76 FR 35564) a final rule amending Title 10 of the *Code of Federal Regulations* (10 CFR) Part 20, "Standards for Protection Against Radiation." This rule modified Section E, "Radiological Criteria for License Termination," and Section F, "Surveys and Monitoring." These changes require licensees to minimize introduction of radiological contamination to the site environment and to conduct surveys to identify the amount of residual radioactivity throughout the site, including quantities in the subsurface. The effective date of the rule was December 17, 2012.

The initial draft of the guidance for this rule was placed in the NRC public document system (ADAMS) in 2008, shortly after the draft rule was published for comment. In December 2011, the NRC issued for comment Draft Regulatory Guide (DG) 4014, "Decommissioning Planning During Operations," which provided draft guidance on implementing the DPR. In July 2012, after revisions to the DG based on 125 comments from six commentators, NRC held a public meeting and "webinar" to discuss the revisions and receive additional comments. The final version is now in NRC Office concurrence and planned for release as Regulatory Guide (RG) 4.22 by the end of calendar year 2012.

DISCUSSION:

Decommissioning regulations require licensees to remediate sites to approved release criteria. Licensees should perform surveys and monitoring to facilitate early detection of significant subsurface contamination and respond appropriately. The regulatory objective is to ensure the licensee and the NRC are aware of contamination that may create conditions that would complicate decommissioning, and possibly create a legacy site.

The DPR requires licensees to establish operational practices to minimize contamination and perform subsurface radiological surveys, and sets forth new financial assurance requirements. It states that licensees must minimize the introduction of contamination to the site environment. It also requires licensees to determine how much contamination exists at the site in order to plan sufficient resources to remediate it in order to terminate the license. The DPR broadens and clarifies the 1997 LTR as follows: (1) requires licensees and applicants to conduct operations in a manner to minimize contamination, but does not mandate any design changes to operating facilities; (2) includes consideration of the subsurface in the radiological surveys required of all licensees by 10 CFR 20.1501(a); (3) establishes a threshold for when residual activity becomes "significant" residual radioactivity; and (4) requires licensees to retain 10 CFR 20.1501 (a) survey records important to decommissioning.

While conducting the periodic review of the effectiveness of the existing site radiation protection programs, as required by 10 CFR 20.1101, consideration of potential subsurface contamination is now explicit instead of implicit.

The DPR applies to all license types, including reactors and uranium recovery (except for 10 CFR 20.1406). For nuclear power plants, implementing Nuclear Energy Institute (NEI) 07-07 (NEI's Ground Water Protection Initiative) is generally considered adequate to meet the monitoring requirements of the DPR. The NRC developed this EGM for exercising enforcement discretion for violations of the DPR for those licensees (except for nuclear power plants that have implemented NEI-07-07) that have identified a need to conduct additional sampling of the site subsurface because of a reasonable possibility of radiological contamination, and the

licensees have made a reasonable amount of progress in collecting the information necessary to define the location(s) of any additional subsurface sampling.

ACTIONS:

The NRC staff considers the exercise of enforcement discretion prudent because the actions to prepare for additional sampling in inaccessible areas and the subsurface may be complex and final staff guidance has not been issued. In accordance with the NRC Enforcement Policy, Section 3.5, "Violations Involving Special Circumstances", the NRC will normally exercise enforcement discretion and not cite licensees for violations of 10 CFR 20.1501 while a licensee develops and implements reasonable plans for additional sampling in inaccessible areas and the subsurface, under the conditions described below.

If an inspector identifies a potential non-compliance with the DPR, the inspector should notify the applicable Regional Branch Chief before the exit meeting with the licensee. All potential non-compliances shall be brought back to the applicable Regional Office for disposition. The Regional Office will evaluate each potential non-compliance, and if the following conditions are met, may disposition the action at the Regional level, in accordance with this EGM:

- (1) The licensee has complied with 10 CFR 20.1101 and identified the need for additional sampling of inaccessible areas and the subsurface of the site.
- (2) The licensee is undertaking reasonable efforts to collect available information about the subsurface in the vicinity of the site in order to define sampling locations.

This EGM is not intended to give discretion for failures to comply with 10CFR 20.1501 for areas other than inaccessible areas and the subsurface of the site.

A violation for which this enforcement discretion will be exercised need not be discussed at an enforcement panel, however, it does require assignment of an enforcement action (EA) tracking number, and shall be documented in an inspection report. When exercising enforcement discretion in accordance with this EGM, the cover letter to the inspection report that discusses the violation should include the following or similar language, as appropriate:

A violation of 10 CFR 20.1501 was identified. Because the violation was identified during the discretion period, and meets the conditions described in Enforcement Guidance Memorandum (EGM) 12-002, the NRC is exercising enforcement discretion in accordance with Section 3.5, "Violations Involving Special Circumstances," of the NRC Enforcement Policy and is, therefore, not issuing an enforcement action for this violation. Specifically, [DESCRIBE HOW THE EGM CONDITIONS WERE MET].

E. Leeds, et al.

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This EGM will remain in effect until one year after the issuance of RG 4.22.

cc: R. W. Borchardt, EDO
M. Weber, DEDMRT
M. Johnson, DEDR
SECY

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