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April 3, 2013

Mr. John D. Kinneman  
Director, Fuel Cycle Safety and Safeguards  
Office of Nuclear Materials Safety and Safeguards  
U.S. Nuclear Regulatory Commission  
Washington, DC 20555-0001

**Subject:** Cumulative Impact of Regulation on Fuel Cycle Facilities – Input for Discussion at April 11, 2013  
Public Meeting in Atlanta, Georgia

**Project Number: 689**

Dear Mr. Kinneman:

On behalf of the fuel cycle industry, the Nuclear Energy Institute (NEI)<sup>1</sup> appreciates the opportunity to discuss the cumulative impact of regulation on fuel cycle facilities regulated by the U.S. Nuclear Regulatory Commission (NRC) during the April 11, 2013, public meeting to be held in Atlanta, Georgia. While this is just one of five topics on the meeting agenda, it is an important one to both industry and NRC from a resource management perspective, and we trust that subsequent discussions on this topic will be held this year, e.g., in May and during the June 11-12 Fuel Cycle Information Exchange to be held at NRC.

First, operational safety is industry's highest priority and we are committed to maintaining our exemplary level of performance as has been demonstrated by our safety record. While maintaining safe and secure operations, it is standard practice in the nuclear industry to review events – from minor incidents to major accidents such as Fukushima – and identify ways to make our facilities even safer. In that regard, we are mindful of the NRC's actions with regard to the commercial nuclear power plants in response to Fukushima as we implement insights and lessons-learned applicable to our operations.

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<sup>1</sup> The Nuclear Energy Institute (NEI) is the organization responsible for establishing unified industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all entities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel cycle facilities, nuclear materials licensees, and other organizations and entities involved in the nuclear energy industry.

With regard to the cumulative impact of regulation on fuel cycle facilities, we offer the following general comments and attached specific initial input for your consideration and discussion during the April meeting. Our overall goal is to ensure that our resources are focused on those NRC or self-identified initiatives that have the greatest potential to improve operational safety and security. That being said, industry's initial input is based on the current set of regulatory initiatives that are transparent to stakeholders--see attached bar chart. Therefore, it would be helpful if NRC could confirm during the April meeting whether there are new initiatives that should be added to our 1-3 year planning horizon. Such visibility will assist our collective efforts to plan our work and prioritize resources.

### **General Comments**

- As has been stated by industry and NRC, the cumulative impact of regulation is not limited to rulemaking. Rather, it includes guidance and standard development, revised NRC positions on existing rules, and new regulatory initiatives, etc. In that regard, the number of active generic regulatory initiatives has increased over the last five years without prioritization and interdependencies being identified and, in some cases, without a clear safety or security basis. For example, in addition to agency efforts to overhaul the NRC's fuel cycle oversight process, the volume of security-related activities increased significantly since 2008: 1) cyber security; 2) chemical security; 3) source security; 4) physical security; 5) a material control and accounting (MC&A) rulemaking; 6) a material re-categorization rulemaking; 7) updated counterintelligence guidance; and potentially, 8) a fitness for duty/work hours rulemaking. Industry has been unable to understand the regulatory basis for a number of these initiatives, and they appear to be separate initiatives where interdependencies have not been assessed, identified, or addressed.
- Industry and NRC have finite resources and it is important that we implement improvements consistent with the safety significance while maintaining our focus on safe and secure operations. This will enable us to focus on those initiatives that have the potential to yield the greatest safety improvement. Interdependencies between certain initiatives must be identified early and effectively managed to avoid re-work or inefficient use of our mutual resources. In that regard, we believe both NRC and industry would benefit from a more formalized program or plan for identifying, prioritizing, and resolving generic regulatory issues as well as facility-specific issues that may negatively impact a facility's ability to address a generic issue.
- Also, there is no publicly available process for determining the priority of regulatory actions based on pre-defined criteria. As a result, neither organization reaps the potential benefits from applying risk insights that could be used to prioritize such initiatives. Instead, industry implementation schedules and resources are based on the issuance of regulatory actions which must then be adjusted for new initiatives in the absence of any regard to relative importance. For example, the Part 73 material re-categorization rule should precede the Part 74 rulemaking that addresses MC&A for the same materials that might be re-categorized under the Part 73 rulemaking. Additionally, the implementing guidance should be developed in parallel and issued in final with the final rule.

- NRC has modified its expectations on how licensees should implement certain Part 70 requirements that have been in effect since 2000 without clearly articulating a safety concern, issue or in some cases inspection finding associated with how the rule has been implemented to date. Specifically, NRC expectations have changed since 2009 in the use of design features, the need for a quantitative dermal exposure standard for workers, and the change management process allowed under the rule. Implementation of a new rule can lead to modified expectations; however, NRC's decision making process on whether and how to impose such modified expectations should be based on specific criteria associated with an expected, increased level of safety from the modified approach which warrants the regulatory action. This is not the case today.
- Equally important is the fact that fuel facilities recently identified facility-initiated operational improvements that have been deferred or protracted to ensure available resources are expended on NRC regulatory initiatives, some of which yield little to no safety benefit to the facilities and some may actually detract from it. Examples are included in Attachment 1 to this letter.

We very much look forward to our engagement on this issue during the April 11<sup>th</sup> public meeting and subsequent discussions. If you have any questions, please feel free to contact me or Andrew Mauer at 202-739-8018; [anm@nei.org](mailto:anm@nei.org).

Sincerely,



Janet R. Schlueter

#### Attachments

c: Mr. Michael F. Weber, DEDMRS/EDO, NRC  
Mr. Michael R. Johnson, DEDRPP/EDO, NRC  
Mr. Victor M. McCree, RA/Region II, NRC  
Ms. Catherine Haney, NMSS, NRC  
Mr. Anthony T. Gody, Jr., R-II/DFFI, NRC  
Mr. James T. Wiggins, NSIR, NRC