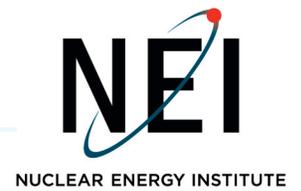


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April 11, 2013

Mr. Mark D. Lombard
Director
Division of Spent Fuel Storage and Transportation
Office of Nuclear Materials Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555-0001

Subject: Industry response to NRC's March 28, 2013, meeting on obtaining stakeholder input on identifying enhancements to the administration of 10 CFR Part 72 Certificates of Compliance and their associated amendments

Project Number: 689

Dear Mr. Lombard:

On behalf of the nuclear energy industry, the Nuclear Energy Institute (NEI)¹ wishes to thank the U.S. Nuclear Regulatory Commission (NRC) for providing, via a public meeting, an opportunity for stakeholders to provide input to the NRC's ongoing efforts to improve the administration of 10 CFR Part 72 Certificates of Compliance (CoC) and their associated amendments. Regulatory process improvements in this area are, indeed, needed to provide a stable and predictable regulatory framework going forward as the dry cask storage industry continues to grow and evolve.

We endorse the goals and objectives of this effort. We agree with the view the NRC stated at the meeting that the existing CoC amendment process is consuming an inordinate amount of time and resources (both for the industry and the NRC) to address changes that have little to no bearing on safety. However, upon reviewing and discussing the NRC's specific planned changes to the CoC administration process, we became aware of several issues that, if not addressed, would make the implementation of the proposed changes problematic. In this regard, our concerns are as follows:

¹ NEI is the organization responsible for establishing unified nuclear industry policy on matters affecting the nuclear energy industry, including the regulatory aspects of generic operational and technical issues. NEI's members include all utilities licensed to operate commercial nuclear power plants in the United States, nuclear plant designers, major architect/engineering firms, fuel fabrication facilities, materials licensees, and other organizations and individuals involved in the nuclear energy industry.

- The legal basis for the categorical application of an Administrative Procedures Act (APA) exemption to forgo issuance of CoC amendments via notice and comment rulemaking has not been adequately articulated. The legal implications of using such exemptions—even when limited to “non-substantive” changes—need to be carefully considered prior to implementing the approach proposed by the NRC staff during the March 28 public meeting.
- The definition of “substantive” proposed during the March 28 public meeting is too vague to provide a meaningful distinction between changes that could be made through a CoC “correction” as opposed to those that could be made through a CoC “revision.” This definition also does not appear to have a sound foundation in regulatory precedent, and its relationship to use of the APA exemptions is unclear.
- The implications of instituting CoC corrections and revisions that have the potential to be retroactively applicable to dry storage systems already licensed and, in many cases, loaded do not appear to have been thoroughly considered.
- The proposed process changes have the potential to significantly impact CoC holders and licensees, yet they are being implemented entirely through internal NRC procedures without opportunity for formal public review and comment.
- The proposed process changes appear to give NRC the ability to make changes in CoCs without the consent of the CoC holder. While we understand that the NRC already has this authority, an NRC-mandated CoC change should be used rarely and only in the event of a safety-significant matter via an order. If the NRC were to make less-significant CoC changes without formal CoC holder concurrence, it would undermine CoC holder ownership of and accountability for the certificates they hold.
- The proposed process changes have the potential to make the CoC administration process more complex and burdensome because they would establish four potential pathways to change a CoC (correction, revision, amendment or new CoC) where there are currently only two (amendment or new CoC).

To address these concerns, we recommend that the NRC first consider the regulatory framework improvements called for in our recent petition for rulemaking (PRM-72-7). We believe revisions to the regulatory framework are foundational and necessary prior to making “administrative changes.” The rule changes called for in PRM-72-7 would, by standardizing CoCs at a more risk-appropriate level of detail, significantly reduce the number of CoC amendments needed to only those having a risk-informed nexus to nuclear safety, thereby achieving the NRC’s goal, as stated in the meeting, of reducing the significant time and resource burden currently associated with the CoC amendment process. With fewer CoC amendments to process, it is likely that the extent to which the administration of the process itself might need to be improved would be significantly lessened and that any needed improvements could be accomplished with a much narrower and more readily implementable scope of changes.

Mr. Mark D. Lombard

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We are eager to continue the dialogue on this subject. We would encourage the NRC to reconsider its plans in light of this feedback and provide an opportunity for additional stakeholder input at an appropriate time in the future. Again, we emphasize that the goals and objectives of this effort are commendable. We are very much interested in working with the NRC so that these can be achieved in a workable manner.

Thank you in advance for consideration of our comments. If you have any questions, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Rodney McCullum", written over a light gray rectangular background.

Rodney McCullum

Attachment

c: Ms. Catherine Haney, NMSS, NRC
Mr. Eric J. Benner, NMSS/DSFST/RIOB, NRC
Mr. Steve Ruffin, NMSS/DSFST/LB, NRC
Norman D. St. Amour, Esq., OGC/GCLR/HLWFCNS, NRC
Adam S. Gendelman, Esq., OGC/GCLR/HLWFCNS, NRC