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December 20, 2013

Ms. Catherine Haney
Director, Office of Nuclear Material Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001

Subject: Status of Industry and NRC Efforts to Address the Cumulative Impact of Regulation on Fuel Cycle Facilities

Project Number: 689

Dear Ms. Haney:

On behalf of the fuel cycle industry, the Nuclear Energy Institute (NEI)¹ appreciates the opportunities provided by the Fuel Cycle Safety and Safeguards (FCSS) Division to address and manage the cumulative impact of NRC regulation on fuel cycle facilities. This letter provides industry's perspective on the status of the actions being taken to address cumulative impact on fuel cycle facilities and the proposed actions for 2014. A critical element for 2014 is the development of a prioritization process for relative ranking of regulatory actions based on safety.

Under the leadership of the Director, Fuel Cycle Safety and Safeguards (FCSS) Division, Ms. Marissa Bailey, the foundations for the development of improved processes for managing regulatory issues that could begin to address the cumulative impact of regulatory actions are being established. These improved processes, when developed and implemented should enable industry and NRC management and resources to be better focused on issues of high, as opposed to lower safety significance.

Summary of 2013 Activities

The actions being taken to address cumulative impact of regulatory actions on fuel cycle facilities parallel those being taken for the power reactor community. Both these communities are learning from each other's public interactions with the NRC staff.

¹ 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.

- **NEI's April 3, 2013 Letter** to the FCSS Division Director described four industry priorities for addressing cumulative impact, listed three rulemakings as candidates for withdrawal, and recommended changes amending three proposed regulations. Equally important, the letter included facility-identified operational improvements that have been deferred or extended because available resources are expended on NRC regulatory actions, some of which yield little to no safety benefit to the facilities. This situation remains true today.
- **Results of 2013 NRC Public Meetings:** The NEI April 3, 2013, proposals were discussed in an April 10, 2013 NRC public meeting. There were additional NRC public meetings in June and October (a December meeting was cancelled due to bad weather). In these meetings, a better appreciation and definition of cumulative impacts were attained and a current integrated schedule was developed with industry input and based on current regulatory expectations and plans. In addition, a common set of fundamental tenets, as described below, were developed and agreed.
 - The cumulative impact of regulation is not limited to rulemaking: It includes guidance and standard development, generic communications, etc. We note that the new NRC-generated integrated schedule of regulatory actions is inclusive of rulemakings and non-rulemaking activities. We look forward to additional milestone detail, e.g., Part 40 staff requirement memorandum (SRM) items, and the incorporation of prioritization insights on future schedules. We also appreciate the staff's positive response to industry input on the level of detail and schedule improvements, e.g., NRC staff lead for each initiative is identified on schedule.
 - Regulatory activities impacting fuel cycle facilities and led by other NRC offices must be identified early; for example, Part 37 rulemaking and the Decommissioning Planning Rule. We encourage a continuing emphasis on internal NRC coordination to ensure all actions impacting the fuel cycle facilities are identified in a timely manner. Also, other federal agencies promulgate rules that impact fuel cycle facilities, e.g., EPA's 40 CFR 190 on radioactive effluents and emissions. The industry will continue to interact with the NRC staff on cross-NRC office and interagency regulatory actions.
 - Interdependencies between certain regulatory initiatives must be identified early and effectively managed to avoid conflicts, re-work or inefficient expenditure of our mutually finite resources, e.g., Parts 73 and 74 rulemakings impacting material categorization, the potential that Part 40 will require some Part 70 licensees to obtain a Part 40 license, and the Part 40 SRM actions on new or improved guidance on Integrated Safety Analyses (ISA). In that regard, we note the Commission's approval of staff-initiated recommendations to close two related ISA guidance development actions in view of the ongoing American Nuclear Society effort to develop ISA guidance for fuel cycle facilities.
 - Resource "pinch points" must be promptly identified and addressed: During the October meeting, industry noted approximately 12 regulatory actions that had milestones, of varying degrees of complexity, scheduled for the December 2013 – January 2014. The existing regulatory requirement for ISA Summary submittals each January compounded by other milestones, e.g., proposed rule on Part 74, resulted in an industry request to defer several milestones until at least

February 2014, e.g., webinars on a potential Part 26 rulemaking. We appreciated the quick NRC response in adjusting schedules, which resolved the resource conflict.

Recommended Focus for 2014

We are encouraged by NRC staff's commitment to continue the quarterly meetings in 2014, dedicated to addressing cumulative impacts.

- **The prioritization of regulatory and industry actions based on safety** is a key priority for 2014. This is essential to enable NRC staff and industry to attain the maximum benefit from an integrated schedule without inadvertently degrading safety. Risk-insights should be used to identify and prioritize actions early in the development process. Unfortunately that is not the case today. Current industry and NRC work schedule development are based on when actions are issued and are expected to be implemented in the absence of any regard to relative importance. As a result, the industry and NRC are in a reactive mode when attempting to resolve emerging issues and actions. This is undesirable and inefficient. The industry has developed a set of **guiding principles** that should assist in the development of safety-focused, integrated schedules and we look forward to discussing them during the meeting being planned for January 2014.
- **Risk-insights should be the basis for prioritization and existing NRC regulatory processes should be used when available**, e.g., a technically sound and well documented regulatory basis and cost-benefit analysis for rulemakings, and a comparably structured approach for non-rulemaking actions.
- **Deferral and termination of regulatory actions** may be beneficial when the action has minimal safety significance or competing resource conflicts. Resources should be allocated to issues of higher safety significance.

We look forward to continuing our productive interactions on cumulative impact during the 2014 meetings being planned. We also appreciate your continuing support and the leadership of Ms. Marissa Bailey on taking action that is beginning to address the cumulative impacts of regulation on fuel cycle facilities.

If you have any questions, please feel free to contact me or Andrew Mauer at 202-739-8018; anm@nei.org.

Sincerely,



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