

October 13, 2015

MEMORANDUM TO: Marissa G. Bailey, Director
Division of Fuel Cycle Safety, Safeguards,
and Environmental Review
Office of Nuclear Material Safety
and Safeguards

FROM: Soly I. Soto-Lugo, Project Manager **/RA/**
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Office of Nuclear Material Safety
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SUBJECT: SUMMARY OF SEPTEMBER 23, 2015, MEETING WITH THE
INDUSTRY AND STAKEHOLDERS TO DISCUSS FUEL CYCLE
REGULATORY ACTIVITIES AND CUMULATIVE EFFECTS OF
REGULATION

The staff of the U.S. Nuclear Regulatory Commission (NRC) met with representatives of the Nuclear Energy Institute (NEI), fuel cycle industry, and members of the public on September 23, 2015, in Rockville, Maryland. The purpose of the Category 2 public meeting was to discuss several topics of mutual interest, including updates to the Cumulative Effects of Regulation Integrated Schedule, Revised Fuel Cycle Oversight Process (RFCOP), and Cyber Security. The meeting announcement is available in the Agencywide Documents Access and Management System under the accession number ML15244A707.

Cumulative Effects of Regulation

The NRC provided updates to the various rulemaking and regulatory activities involving the fuel cycle industry listed in the Integrated Schedule of Regulatory Activities for Fuel Cycle. The NRC staff communicated that completed activities such as the Generic Letter (GL) and Interim Staff Guidance (ISG) on Natural Phenomena Hazards will be removed from the integrated schedule in the next revision.

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The NRC staff and industry discussed certain aspects of the proposed Title 10 of the *Code of Federal Regulations* (10 CFR) Part 73 rulemaking. Based on the regulatory basis, industry expressed concern that the proposed rulemaking, as it relates to transportation of special nuclear material, could be challenging for fuel cycle facilities. The NRC staff noted industry's concern and indicated that there will be future public interactions through the rulemaking process where the industry will have the opportunity to further discuss these concerns. Additionally, the industry communicated that the time between releasing the preliminary language for information and the public comment period on the preliminary language was too long. The NRC staff explained that the staff expects to release the preliminary draft rule text and guidance language as the rule is developed and that seven months was the planned development time.

The NRC staff and industry discussed certain aspects of the Part 21 rulemaking. The NRC staff indicated that the final Regulatory Basis was issued in August 2015. Additionally, the staff indicated that Draft Regulatory Guide (DG)-1292, "Dedication of Commercial Grade Items," will be issued prior to preparation of the proposed rule to endorse the Electric Power Research Institute Guidance for reactors. The NRC staff provided status of the DG, which has been prepared and is entering concurrence. The NRC staff also mentioned that they will be engaging industry on the path forward for non-reactor guidance, specifically, to determine the role industry would prefer in the preparation of evaluating and reporting guidance (DG-1291). Public meetings will be held in October and November on this topic.

For 10 CFR Part 26 rulemaking, the NRC staff indicated that they reviewed the proposed alternative to rulemaking that would add fatigue measures for security officers at Category 1 facilities and will request the Commission to terminate this rulemaking. If the Commission does not terminate this rulemaking, the staff will need to submit the regulatory basis to the Office of Nuclear Material Safety and Safeguards in February 2016.

The NRC staff and industry also discussed non-rulemaking activities associated with the integrated schedule. The staff stated that the GL was completed and issued on June 22, 2015. The GL requested responses from the licensees by September 22, 2015. The staff indicated that the ISG on natural phenomena hazards was issued on June 26, 2015, and the *Federal Register* was published on June 7, 2015.

The NRC staff committed to review the information on the integrated schedule and supplement, and to post these documents on the public website available at: <http://www.nrc.gov/materials/fuelcycle-fac/regs-guides-comm.html#cumeffects>. The supplement to the integrated schedule was revised after the meeting to indicate that the DG-5049, "Independent Assessment of Nuclear Material Control and Accounting Systems," was issued for public comment on September 17, 2015, with a 60-day comment period ending on November 16, 2015. The slides for the meeting presentation are included in Enclosure 1 and the attendees list is available in Enclosure 2. Enclosure 3 is the fuel cycle integrated schedule, and Enclosure 4 is the supplement to that schedule. No regulatory decisions or commitments were made during the meeting.

Revised Fuel Cycle Oversight Process

The RFCOP presentation provided a status on current progress and plans for future development. The NRC staff presented an update on the RFCOP cornerstones, which will be

submitted to the Commission for approval in January 2016. The significance determination process development is on schedule. The staff have developed draft screening questions to logically screen more-than-minor performance deficiencies to very low safety significance and continue to conceptually develop the framework for the cornerstone-specific risk evaluation guidance. The staff also shared concepts that will need to be developed to support changes to the performance assessment and inspection programs.

The staff highlighted that an effective corrective action program (CAP) which is a prerequisite to participate in the RFCOP. And for those licensees that have an effective CAP it would be appropriate to reduce the core inspection effort (e.g., extend the frequency of inspections) in some areas, because the licensee would be expected to effectively self-identify and correct problems. Overall, the industry indicated that the RFCOP can provide benefits to both the NRC and industry through enhancements to the inspection, assessment, and significance determination programs. The staff plans on discussing potential options in changing the core inspection effort for licensees with an effective CAP at a public meeting in the spring of 2016.

In addition, the staff and industry aligned on a draft definition of performance deficiency. The proposed definition states, "The licensee's failure to satisfy one or more regulatory requirement where the failure was reasonably foreseeable and preventable." Industry commented that the definition should be supported by examples or specific guidance to clarify the meaning of "reasonably foreseeable and preventable."

Follow-up Discussion from Licensing and Inspection Program Roundtable at FCIX 2015

During the 2015 Fuel Cycle Information Exchange (FCIX), NRC staff, representatives from NEI, and members of the industry had a roundtable discussion on best practices, areas of improvement, coordination, and industry perspectives on NRC's licensing and inspection programs. Following the roundtable discussion at FCIX, the industry requested to further discuss several topics during this public meeting. During the follow-up meeting, the NRC staff addressed industry's concerns related to both the inspection programs and licensing activities. Specifically, industry's concerns were related to enhanced communication between the licensee and project managers (e.g., provide draft request for additional information [RAI] to the licensee), guidance on major vs minor license activities, clarification on items that are considered findings and observations, inspection schedule and coordination, and the re-exit process after an inspection is completed.

During the discussion, NRC staff indicated that licensing project managers are already providing draft RAIs to licensees when appropriate and with the goal to institutionalize this in the next revision to NUREG-1520, "Standard Review Plan for Fuel Cycle Facilities License Applications." Furthermore, NRC staff stated that guidance on 10 CFR Section 70.72 and Regulatory Guide 3.74 is adequate and that the staff is not planning to develop additional guidance with regards to major and minor licensing actions. However, the NRC is open to supporting a licensing workshop if the fuel cycle industry request it in the future. With regards to the inspection program, the NRC staff indicated that RII management is working with the inspectors on expectation of items that are considered findings and the items that are considered observations; the issue should be resolved.

In addition, the NRC staff indicated that they will consider the feasibility of the licensing project managers joining the Permanent Plant Modification Inspection with the purpose of integrating and following up on Integrated Safety Analysis summary update information related to 10 CFR 70.72 changes. The NRC staff stated that the 2016 inspection schedule has been shared, and the goal for next year is to prepare the 2017 inspection schedule for 18 months and update the schedule on a quarterly basis. Finally, the NRC staff noted industry's recommendation to consider providing licensees with the opportunity for input before "re-exit" and explained that inspections end with preliminary findings subject to management review.

NEI Presentation on Fuel Cycle Facilities Cyber Security Rulemaking

NEI provided a presentation on cyber security rulemaking. The presentation was focused on Category II and Category III fuel cycle facilities. NEI provided industry's perspective preventing theft, diversion and sabotage, technical basis for requirements, and provided a high level discussion on the draft regulatory basis. The merits of the regulatory activities associated with the 10 CFR Part 73 Cyber Security Rulemaking were not discussed during this session. The NRC staff led a separate public meeting on September 23, 2015, to provide stakeholders the opportunity to discuss the draft Regulatory Basis for the proposed fuel cycle cyber security rulemaking, seek clarification on the document's content, and discuss comments.

Enclosures:

1. Slide Presentations for September 23, 2015
(ML15271A080)
2. Attendees List (ML15275A082)
3. CER (ML15272A099)
4. Integrated Schedule (ML15272A109)

cc: w/enclosures: Janet Schlueter

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