

Rulemaking1CEm Resource

From: RulemakingComments Resource
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Subject: Comment on ANPR-26, 50, 52, 73, and 140 - Regulatory Improvements for Decommissioning
Attachments: Comment from Dunn on behalf of the Environmental Council of the States.pdf

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Comment On: NRC-2015-0070-0007

Regulatory Improvements for Decommissioning Power Reactors; Extension of Comment Period

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Comment on FR Doc # 2015-32599

Submitter Information

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Submitter's Representative: Alexandra Dapolito Dunn

Organization: Environmental Council of the States

Government Agency Type: State

General Comment

Please see the attached comment letter from the Environmental Council of the States.

Attachments

ECOS Letter on ANPRM NRC

March 17, 2016



Stephen G. Burns, Chairman
Jeff Baran, Commissioner
Nuclear Regulatory Commission
Washington, DC 20555-0001

Kristine J. Svinicki, Commissioner
William C. Ostendorff, Commissioner

Re: *ANPRM, Regulatory Improvements for Decommissioning Power Reactors*, 80 Fed. Reg. 72,358 (11/19/15); 80 Fed. Reg. 80,709 (12/28/15) (Extension to 3/18/16)

THE
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PAST PRESIDENT

Alexandra Dapolito Dunn
Executive Director &
General Counsel

Honorable Chairman and Commissioners of the Nuclear Regulatory Commission,

The Environmental Council of States (ECOS) is the national non-profit, non-partisan association of state and territorial environmental agency leaders. ECOS, on behalf of states, appreciates the opportunity to comment on the Advanced Notice of Proposed Rulemaking for regulatory improvements for decommissioning nuclear power reactors (Rule). ECOS respectfully requests that the Nuclear Regulatory Commissioners (NRC) expressly recognize state authority over non-radiological activities associated with decommissioning nuclear plants.

ECOS members are charged with protecting human health and the environment from non-radiological activities at nuclear plants that can harm air and water quality. States have a strong interest in decommissioning rules that work in coordination with programs that ensure proper solid and hazardous waste management and disposal, and that address spill investigation and cleanup.

There are compelling legal and policy reasons that the Rule should expressly recognize state and local authority over non-radiological activities at nuclear plants. The Atomic Energy Act (AEA) expressly reserves to state and local authorities the power to regulate nuclear activities for purposes other than protection against radiation hazards, 42 U.S.C. § 2021(k), and nuclear licensees must comply with applicable state authority to the extent that there is no actual or irreconcilable conflict with licensee obligations under the AEA. *See, e.g., Illinois v. Kerr-McGee* 677 F.2d 571, 581–584 (7th Cir. 1982). Where states are exercising authority under federally delegated programs like the Resource Conservation and Recovery Act, the analysis is focused on the two federal statutes, not on potential preemption. *See, e.g., POM Wonderful, LLC v. Coca-Cola Co.*, 134 S.Ct. 2228, 2236 (2014). Both federal statutes must be given effect unless there is “irreconcilable conflict” between the two schemes. *Legal Environmental Assistance Foundation v. Hodel*, 586 F. Supp. 1163, 1167 (D.C. Tenn. 1984) (citing *Radzanower v. Touche Rose & Co.*, 426 U.S. 148, 155 (1976)).

Clarity in the Rule is especially critical if significantly delayed decommissioning and the SAFSTOR decommissioning method will continue to be an option for licensees. Current NRC regulations recognize that the SAFSTOR option can be implemented without elevating radiological safety risks, but a decades-long decommissioning timelines creates additional environmental risks and challenges for states. States long have had authority to manage and remediate non-radiological wastes during the decommissioning process, and the Rule should make this clear. State environmental agencies have technical expertise to protect human health and the environment during decommissioning and site restoration from risks associated with non-radiological activities commonly encountered during nuclear plant clean-ups.

For these reasons, ECOS urges the NRC to include an express recognition in the Rule of state authority over non-radiological activities during the decommissioning process. Thank you for considering our input.

Sincerely,

Alexandra Dapolito Dunn
ECOS Executive Director & General Counsel

Cc. Barnes Johnson, Office of Land and Emergency Response, US EPA
ECOS Officers and Executive Committee
Executive Directors of ASTHO, ASTWMO, CRCPD