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General Comment

Comments from the Decommissioning Plant Coalition on the ANPR regarding Decommissioning

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Attachments

02 - DPC Comments - ANPR on Decommissioning

01 - DPC Comments - ANPR on Decommissioning

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March 17, 2016

Secretary, U.S. Nuclear Regulatory Commission
Washington, D.C., 20555-0001
ATTN: Rulemaking and Adjudications Staff

Re: Docket ID NRC-2015-0070

The Decommissioning Plant Coalition (DPC)[i] is submitting comments on the Nuclear Regulatory Commission's (NRC) Advanced Notice of Proposed Rulemaking (ANPR) concerning prospective changes to regulations for the decommissioning of nuclear power reactors. We have some overarching comments on the ANPR.

First, as the rulemaking initiative is not addressing any safety or security concerns, potential changes must pass the test of improving and making more efficient and predictable the decommissioning process by reducing reliance on a number of licensing actions.

We believe this test must be guided by the staff's findings on page 15 of the ANPR: "The NRC has not identified any significant risks to public health and safety in the current regulatory framework for decommissioning power reactors. Consequently, the need for a power reactor decommissioning rulemaking is not based on any identified safety-driven or security-driven concerns. When compared to an operating reactor, the risk of an offsite radiological release is significantly lower, and the types of possible accidents are significantly fewer, at a nuclear power reactor that has permanently ceased operations and removed fuel from the reactor vessel.

[i] The DPC was established in 2001 out of the recognition that the overwhelming attention of the regulator, the industry and policy makers would be focused on the operating fleet and provides a forum for the identification of federal policy and regulatory issues of unique or special concern to decommissioning civilian nuclear facilities. Since its inception, plants that have been represented in the work of the DPC include: Big Rock (MI), Connecticut Yankee (CY), Dairyland (WI), Humboldt Bay (CA), Maine Yankee (ME), Rancho Seco (CA), San Onofre (CA), Vermont Yankee (VT), Yankee Rowe (MA), Zion (IL), and Crystal River (FL).

Although the need for a power reactor decommissioning rulemaking is not based on safety concerns, the NRC understands that the decommissioning process can be improved and made more efficient and predictable by reducing its reliance on processing licensing actions to achieve a long-term regulatory framework for decommissioning. "

We believe that the 4th regulatory objective stated in the ANPR on page 17 – "Identify, define, and resolve additional areas of concern related to the regulation of decommissioning power reactors" - must strictly adhere to the primary and principle objective of the prospective rulemaking therein stated: "to implement appropriate regulatory changes that reduce the number of licensing actions needed during decommissioning." It follows that rulemaking ought to address those exemptions and other licensing actions that have historically been necessary to adjust NRC requirements to fit the reduced risks at decommissioning reactors.

To that end, the DPC gives broad support to the Proposed Rulemaking Language the Nuclear Energy Institute (NEI) will include with its comments that facilitate a focused and prompt rulemaking that would be consistent with the exemptions and license amendments that NRC has recently approved at ongoing decommissioning projects. We believe such an effort would conform to the objectives of the ANPR.

It is important that we all "look alike" in regulatory space when reaching the end stages of decommissioning. We believe the ANPR addressed many issues relating to exemptions that are issued as a plant ceases operation. It has been our goal to review the questions through the experience of our members who are now "ISFSI Only" facilities. Members who have recently shutdown and arrive at "ISFSI Only" status at some point in the future in a regulatory posture inconsistent with those already there is not a desirable outcome.

NRC defines, "ISFSI Only," on its website as a site where the plant license has been reduced to include only the spent fuel storage facility.[ii] We hope that our comments, and the comments you will receive from our individual members, will reinforce our view that the rulemaking take full account of the historical exemptions and approvals provided to licensees that underwent the decommissioning process defined in 10 CFR 50.82 to the point of achieving "ISFSI Only" status. In reviewing the ANPR, and through discussions with NRC personnel involved in the ANPR, it appears that the focus of the rulemaking is on the "transition period" following plant shutdown and through the process of moving SNF from the reactor to the spent fuel pool and then to dry storage. As such, the proposed rule should not apply to former reactor sites that have already completed decommissioning of the power plant and are "ISFSI Only" sites. However, to the extent the NRC intends to have the rulemaking include "ISFSI Only" facilities we recommend the NRC consider modifying 10 CFR 72 and the applicable portions of 10 CFR 50 and 10 CFR 73 to define the "ISFSI Only" state for a 10 CFR 72 general licensee that is compatible with

[ii] "Backgrounder on Decommissioning Nuclear Power Plants"

and comparable to the "ISFSI Only" state currently approved for 10CFR 72 specific licensees. Such an action would eliminate the need for additional exemptions and other approvals that general licensees acquire while transitioning to or after achieving "ISFSI Only" status. This approach would help fulfill the stated goal of this rulemaking of making more efficient and predictable the decommissioning process by reducing reliance on a number of licensing actions.

Next, we believe that the NRC needs to recognize the basic fact that upon the permanent, "cessation of operations" that, de facto, there is no longer an operating reactor at the site and there no longer exists a License to Operate. Thus, relevant parts of operating reactor requirements should cease to apply.

We believe that subsequent new Part 50, Part 52, and Part 72 rules and guidance documents need to be reviewed before they are proposed, and a determination made and explicitly stated as to whether or not they apply to permanently shut down sites and/or ISFSI only sites.

We believe that the Commission should no longer be involved in the approval of changes to emergency plans that stem from exemption requests from permanently shut down sites such as those that the Commission has recently approved. The same is true for future changes at any permanently shut down sites. As this approval requirement was instituted to evaluate changes in operating facilities, and pre-dated the recent notices of cessation of operations, such a change in Commission practice is consistent with the reduced risk at permanently shut down sites and in keeping with your efforts under the Principles of Good Regulation and with your Project AIM effort. This is a change that can be made exclusive of this rulemaking effort.

We are providing answers in the enclosed appendix to the questions the staff raises under, "V. Specific Considerations," and, "VII Cumulative Effects," as well as other suggestions that we believe merit attention as the NRC considers any changes to regulations that affect decommissioning plants and facilities that have been or will be decommissioned but for the remaining Independent Spent Fuel Storage Installation (ISFSI).

We will be pleased to assist in any way we can in reducing the number of licensing actions both licensees and the NRC must tend to throughout the decommissioning process and during ISFSI operations.

Sincerely,

Wayne Norton,
Executive Spokesperson
Decommissioning Plant Coalition

Appendix

Questions Related to Emergency Planning Requirements for Decommissioning Power Reactors

EP – 1

a. What specific EP requirements in 50.47 and Appendix E should be evaluated for modification, including any EP requirements not addressed in previously approved exemption requests for licensees with decommissioning reactors?

Modifications can be limited to those previously approved exemptions from EP requirements in 50.47 or Appendix E to 10 CFR Part 50. The staff's determination that there are no possible design-basis events at a decommissioning licensee's facility that could result in an offsite radiological release exceeding the limits established by the EPA's early-phase protective action guidelines of 1 rem at the exclusion area boundary provides ample basis for our conclusion.

After a licensee has submitted the certification of permanent fuel removal from the reactor vessel pursuant to 10 CFR 50.82 and performed a Qualifying Analysis using a method approved by NRC demonstrating that a spent fuel pool drain-down event would not initiate an offsite radiological release that would trigger protective actions to the public, a licensee should by rule be able to transition to an emergency response posture consistent with exemptions granted in the past.

We do believe the question's scope reflects the omission of plants that are ISFSI only and have all fuel in an ISFSI.

The ANPR does not address changes to 10 CFR 72.32 that would be necessary to conform to changes in 50.47 and Appendix E.

If the rulemaking were to achieve its goals, then a change to 50.36 (50.36(c)(iii)(6)) may also be needed.

b. What existing NRC EP-related guidance and other documents should be revised to address implementation of changes to the EP requirements?

There are a number of guidance documents needing change. They include but are not limited to:

- A change to 10 CFR Part 50.36 may be necessary to remove the case-by-case requirement re: Technical specifications under 36.(c)(iii)(6).
- Reg Guide 1.219, Guidance on *Making Changes to Emergency Plans for*

Nuclear Power Reactors

- NUREG 0654, Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants
- NUREG 0586, Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities
- NRC Form 361, Reactor Plant Event Notification Worksheet
- ISG-01, Emergency Planning for Nuclear Power Plants (Guidance for EP rule changes)
- RIS 2005-02, Process for Making Emergency Plan Changes (Guidance for determining decreases in effectiveness)
- IP 85501, Decommissioning Emergency Preparedness Program Evaluation (inspection procedure for decommissioning plants)
- ISG-02, Emergency Planning Exemption Requests for Decommissioning Nuclear Plants
- IP 82401, Decommissioning Emergency Preparedness Scenario Review and Exercise Evaluation

c. What new guidance would be necessary to support implementation of changes to EP requirements?

If additional guidance is needed, we will be pleased to assist in its development.

EP – 2

a. What tiers and associated EP requirements would be appropriate to consider for this approach?

It is appropriate to adopt a tiered approach for EP once the NRC is notified that reactor operations at a site have permanently ceased. It is important that the requirements for EP at any defined stages or tiers be developed according to ever-decreasing risk of any offsite release once the reactor ceases to operate.

The NRC can utilize tiers such as: Permanently Shutdown; Permanently Defueled; Permanently Defueled with Qualifying Analysis; All Fuel and GTCC (if any) in Dry Storage; All Fuel and GTCC Removed from Site.

The NRC can define these tiers, and can specify in the rule those requirements that no longer apply – especially those for which exemptions have been granted – for those tiers.

b. What factors should be considered in establishing each tier?

The sharply reduced risk upon the cessation of reactor operation and the status of

the fuel as it progresses to dry storage served as the basis for granting of exemptions. These are valid factors to constructing these tiers.

c. What type of basis could be established to support each tier or factor?

We believe that the regulatory basis for any such approach is and has been well established in the course of the analyses submitted by licensees and reviewed by NRC in support of granted exemptions.

d. Should the NRC consider an alternative to the tiered approach for modifying EP requirements? If so, provide a description of a proposed alternative?

We do not believe so. Any proposal for an alternative must meet the test set forth by the staff in the purpose of the ANPR: "of improving and making more efficient and predictable the decommissioning process by reducing reliance on a number of licensing actions."
There are no safety issues that prompt the staff to seek alternatives. Therefore, the tiered approach is appropriate to modifying EP requirements to reflect the decreased risks posed by the decommissioning facility.

EP – 3 through EP – 8

Our general comment on questions EP -3 through EP - 8 is that they

- reflect an approach to the regulatory oversight of permanently shutdown and decommissioned or decommissioning facilities as if there were a reactor with a license to operate continuing to be on-site, and/or
- do not differentiate between the stages or, "tiers," discussed in the question and answer to EP-2.

Therefore, a major improvement that this rule must accomplish is the simple acknowledgement that once the operation of the reactor has "permanently ceased", there is no longer a License to Operate and that specific EP requirements can be eliminated as appropriate to the "tiered" approach in EP- 2 above.

EP – 3

a. What other aspects of onsite EP and response capabilities may be appropriate for licensees at decommissioning sites to maintain once the requirements to maintain formal offsite EP are discontinued?

None. On-site plans have been established by each of the licensees and have been proven adequate to meet health and safety requirements.

b. To what extent would it be appropriate for licensees at decommissioning sites to arrange for offsite assistance to supplement onsite response capabilities?

The rule can establish the requirements consistent with existing and historical arrangements that have been made at decommissioned and decommissioning plants.

c. What corresponding changes to 50.54(s)(2)(ii) and 50.54(s)(3) may be appropriate when offsite radiological plans would no longer be required?

These provisions should not apply to decommissioning plants.

EP – 4

a. Should 50.54(q) be modified to recognize that nuclear power reactor licensees, once they certify under § 50.82, "Termination of License," to have permanently ceased operation and permanently removed fuel from the reactor vessel, would no longer be required to meet all standards in § 50.47 and all requirements in appendix E? If so, describe how.

Yes. Section 50.54(q) should be modified to specifically state that when a permanently shut down reactor seeks to make changes to its Emergency Plan, the "reduction in effectiveness" test is evaluated against the facility's permanently shut down status, thereby recognizing the permanent change in plant configuration.

b. Should nuclear power reactor licensees, once they certify under § 50.82 to have permanently ceased operation and permanently removed fuel from the reactor vessel, be allowed to make emergency plan changes based on § 50.59, "Changes, Tests, and Experiments," impacting EP related equipment directly associated with power operations? If so, describe how this might be addressed under § 50.54(q).

Yes.

EP – 5

Should § 50.54(t) be clarified to distinguish between EP program review requirements for operating versus permanently shut down and defueled sites? If so, describe how.

10CFR50.54(t)(1)(i) that requires a review all EP program elements every 12 months should not apply to decommissioning plants.

EP – 6

At what point(s) in the decommissioning process should ERDS activation, ERDS equipment, and the instrumentation for obtaining ERDS data, no longer be necessary?

Section 50.72(a)(4) should not apply once a facility has permanently ceased reactor operations.

EP – 7

What changes to § 50.72(a)(1)(i) should be considered for decommissioning sites?

A change consistent with the 1-hour notification described in ISG-02 should be considered; also see answer to EP – 1.

EP – 8

What changes to §50.72(b)(3)(xiii) should be considered for decommissioning sites?

Eliminate the 8-hour notification requirement for decommissioning plants. A major loss of emergency assessment capability (e.g., significant portion of control room indication, emergency notification system, or offsite notification system) is only applicable to operating plants since much of the described capability is no longer needed, functional, or in use after permanent shutdown. Also see answer to EP – 1.

Questions related to the physical security requirements for decommissioning power reactor licensees

Our general comment on this section is that it is narrowly focused on reactors that are, in the staff's terms, "transitioning," from reactor operations but fails to recognize that all will eventually be in an "ISFSI only" state. Therefore, the DPC believes that the Decommissioning Rule will be facilitated at "ISFSI only" locations by relying upon the Orders that are currently in effect.

PSR-1

Identify any specific security requirements in § 73.55 and appendices B and C to 10 CFR part 73 that should be considered for change to reflect differences between requirements for operating reactors and permanently shut down and defueled reactors.

Upon permanent shutdown of a reactor, a sharply reduced risk of radiological consequences and an inexorable journey begins of the site to an ISFSI-only status. Similar to the "tiered" approach for EP, security requirements must recognize the declining risk at each stage of that journey until they would be covered by 73.51. For example, permanently shutdown and defueled reactors with all fuel in dry storage should be exempt from 10CFR73 and 10CFR50.54(p). The potential for radiological sabotage or diversion of special nuclear material at the 10 CFR Part 50 licensed site is eliminated; and the ISFSI has an NRC approved physical security plan as required by 10 CFR 72.180 and 10 CFR 73.51.

PSR-2

a. Are there any suggested changes to the physical security requirements in 10 CFR part 73 or its appendices that would be generically applicable to a decommissioning power reactor while spent fuel is stored in the SFP (e.g., are there circumstances where the minimum number of armed responders could be reduced at a decommissioning facility)? If so, describe them.

Yes. As the risks are sharply reduced and the target set(s) are sharply reduced upon permanent cessation of operations, the requirements should be reduced as well.

b. Which physical security requirements in 10 CFR part 73 should be generically applicable to spent fuel stored in a dry cask independent spent fuel storage installation?

10 CFR 73.51 and the existing Security Orders apply to spent fuel stored in an ISFSI. At that point, 10 CFR 50.72.212(b)(9) should be consistent with – the same as – 73.51

c. Should the DBT for radiological sabotage continue to apply to decommissioning reactors? If it should cease to apply in the decommissioning process, when should it end?

A site should be treated the same as a specific license ISFSI once all spent fuel has been placed in dry storage.

PSR – 3

Should the NRC develop and publish additional security-related regulatory guidance specific to decommissioning reactor physical protection requirements, or should the NRC revise current regulatory guidance documents? If so, describe them.

No, additional guidance and revisions are not necessary.

PSR – 4

What clarifications should the NRC make to target sets in § 73.55(f) that addresses permanently shut down and defueled reactors?

None.

PSR – 5

For a decommissioning power reactor, are both the central alarm station and a secondary alarm station necessary? If not, why not? If both alarm stations are considered necessary, could the secondary alarm station be located offsite?

Once all fuel is in dry storage, an on-site secondary alarm station is not necessary, consistent with § 73.51(d)(3).

PSR – 6

a. Are any changes necessary to § 73.54 to explicitly state that decommissioning power reactors are within the scope of § 73.54? If so, describe them.

Yes. The rulemaking should clarify that decommissioning reactors are not within the scope of 73.54, and the Cyber Security Rule is not applicable to decommissioning reactors generally.

b. Should there be reduced cyber security requirements in § 73.54 for decommissioning power reactors based on the reduced risk profile during decommissioning? If so, what would be the recommended changes?

Yes. There should be no cyber security requirements. See answer to a., above.

PSR – 7

...,are there any concerns about changing the regulations to include the CFH as having the authority to suspend certain security measures during certain emergency conditions or during severe weather for permanently shut down and defueled reactor facilities? If so, describe them.

This question is perhaps poorly worded and either seems to be attaching unusually large importance to the Certified Fuel Handler position(s) or simply "forgets" to include situations in which CFH(s) are no longer needed on site.

This is an important position as it carries a great deal of responsibility for the movement and monitoring of fuel until it is safely stored in casks on the ISFSI. At that point, there is no need for the position during the period of passive storage on the pad. At no time in the process is the Certified Fuel Handler routinely given authority over the site, and there seems to be wording inherent in the question that could lead to an assumption that the CFH position needs to be invested with the equivalent responsibilities of, and the same skills, knowledge, and abilities as a site manager. The Certified Fuel Handler can certainly decide when fuel movement operations can be suspended in extreme weather, but the CFH is not vested with site-wide security responsibility.

As suspension in extreme weather is a decision that can be made, for example, by the qualified "on shift supervisor" of the security force once the site is in an "ISFSI only" configuration, it follows that this decision can and should be made by the senior shift supervisor during decommissioning activities.

PSR – 8

...are there any concerns related to changing the regulations in § 73.55(j)(4)(ii) to allow another communications system between the alarm stations and the shift manager/CFH in lieu of the control room at permanently shut down and defueled reactors? If so, describe them.

No.

<u>Questions related to fitness for duty (FFD) requirements for decommissioning power reactor licensees</u>

FFD – 1

a. Should the NRC pursue rulemaking to describe what provisions of 10 CFR part 26 apply to decommissioning reactor licensees or use another method of establishing clear, consistent and enforceable requirements? Describe other methods, as appropriate.

Power reactor licensees that have ceased operations, though they may and likely continue to employ industrial fitness for duty requirements, should not be subject to Part 26. This is appropriate given the reduction in risk associated with cessation of operations and permanent defueling of the reactor vessel. Facilities in this configuration are similar to facilities that are specifically excluded from the requirements of Part 26, such as spent fuel storage facilities and non-power reactor licensees that possess formula quantities of irradiated SSNM. The FFD Rule does not and should not apply to ISFSI Only sites regardless of whether they have part 50 or part72 license.

b. As an alternative to rulemaking, should the drug and alcohol testing for

decommissioning reactors be described in RG 5.77, with appropriate reference to the applicable requirements in 10 CFR part 26? This option would be contingent on an NEI commitment to revise NEI 03-12 to include the most recent revision to RG 5.77 (which would include the applicable drug and alcohol testing provisions) and an industry commitment to update their security plans with the revised NEI 03-12.

No.

c. Describe what drug and alcohol testing requirements in 10 CFR part 26 are not necessary to fulfill the IMP requirements to assure trustworthiness and reliability.

Power reactor sites that have ceased operations, though they may and likely continue to employ industrial fitness for duty requirements, should not be subject to Part 26.

d. Should another regulatory framework be used, such as a corporate drug testing program modeled on the U.S. Department of Health and Human Services' Mandatory Guidelines for Federal Workplace Drug Testing or the U.S. Department of Transportation's drug and alcohol testing provisions in 49 CFR part 40? If this option is proposed, describe how (i) the laboratory auditing, quality assurance, and reporting requirements would be met by the proposal; (ii) licensees would conduct alcohol testing; and (iii) the performance objectives of 10 CFR 26.23(a), (b), (c), and (d) would be met.

Power reactor sites that have ceased operations, though they may and likely continue to employ industrial fitness for duty requirements, should not be subject to Federally imposed drug testing program.

FFD-2

a. Should any of the fatigue management requirements of 10 CFR part 26, subpart I, apply to a permanently shut down and defueled reactor? If so, which ones?

No.

b. Based on the lower risk of an offsite radiological release from a decommissioning reactor, compared to an operating reactor, should only specific classes of workers, as identified in § 26.4(a) through (c), be subject to fatigue management requirements (e.g., security officers or certified fuel handlers)? Please provide what classes of workers should be subject to the requirements and a justification for their inclusion.

No.

c. Should the fatigue management requirements of 10 CFR part 26, subpart I, continue to apply to the specific classes of workers identified in response to question b above, for a specified period of time (e.g., until a specified decay heat level is reached within the SFP, or until all fuel is in dry storage)? Please provide what period of time workers would be subject to the requirements and the justification for the timing.

No.

d. Should an alternate approach to fatigue management be developed commensurate with the plant's lower risk profile? Please provide a discussion of the alternate approach and how the measures would adequately manage fatigue for workers.

No.

<u>Questions related to training requirements of certified fuel handlers for decommissioning power reactor licensees</u>

Our general comment on these questions is that the NRC must be careful to distinguish between different, significant stages of the decommissioning process. For example, certified fuel handlers are no longer needed where spent fuel and GTCC waste is passively stored at ISFSI Only sites.

CFH – 1

a. When should licensees that are planning to enter decommissioning submit requests for approval of CFH training/retraining programs?

This need not be a matter subject to NRC regulation. Licensees planning to enter decommissioning should submit requests for approval of company certified CFH training/retraining programs prior to the date upon which permanent cessation of operations is planned. The necessary NRC lead-time can be communicated in other ways and need not be mandated by regulatory requirements.

b. What training and qualifications should be required for operations staff at power reactors that decommission earlier than expected and that do not have an approved CFH training/retraining program?

This matter need not be subject to NRC regulation. It can be accommodated in guidance (i.e. NEI 15-04).

c. Should the NRC issue new requirements that prohibit licensees from surrendering operators' licenses before implementation of an approved CFH

training/retraining program, or should other incentives or deterrents be considered? If so, what factors must be included?

The NRC should clarify minimum shift requirements after the permanent cessation of operations.

An example is minimum shift requirements are based on the Emergency Plan. After shutdown, and once the fuel is moved to dry cask storage, the company can identify those individuals who can implement the remaining EP and what their training requirements are without approval from the NRC. The NRC should not approve the CFH training/retraining program but authorize the utility to implement a program and inspect against the requirements of the EP

d. Should the contents of a CFH training/retraining program be standardized throughout the industry? If so, how should this be implemented?

No. Each plant is unique in its requirements post shutdown. A company certified CFH training/retraining program should be used at each unique shutdown site.

e. Should a process be implemented that requires decommissioning power reactor licensees to independently manage the specific content of their CFH training/retraining program based on the systems and processes actually used at each particular plant instead of standardization? If so, how should this work?

The driving concern behind the CFH program needs to be the protection of the fuel in wet storage and the implementation of the E-Plan. Each site will be different so the regulations should only state that the utility must have a program to protect the fuel and implement the E-Plan.

f. Is there any existing or developing document or program (from the Institute of Nuclear Power Operations, NEI, NRC, or other related sources) that provides relevant guidance on the content and format of a CFH training/retraining program that could be made applicable to CFH training?

NEI 15-04 describes such a program.

g. Should the requirements for CFH training programs be incorporated into an overall decommissioning rule, or addressed using other regulatory vehicles such as associated NUREGs, regulatory guides, standard review plan chapters or sections, and inspection procedures?

Once there is a better definition of the company certified CFH position training in the rule and under what phases of decommissioning the CFH is required, together

with the development of NEI 15-04, no other rules changes are needed. Certainly, inspectors will need training on the changes.

Questions related to the current regulatory approach for decommissioning power reactor licensees

REG – 1

The selection of a decommissioning method is not an arbitrary decision. Note the assertion in this question that, "The choice of the decommissioning method is left entirely to the licensee…" We believe that statement overlooks the many factors that play a role in a selection of how decommissioning is planned. Many will continue to play a role in future shut down decisions.

a. Should the current options for decommissioning—DECON, SAFSTOR, and ENTOMB—be explicitly addressed and defined in the regulations instead of solely in guidance documents, and how so?

We believe no changes are warranted to the current options for decommissioning.

b. Should other options for decommissioning be explored? If so, what other technical or programmatic options are reasonable and what type of supporting documents would be most effective for providing guidance on these new options or requirements?

No. There is no safety need to undertake this activity. The exploration is inconsistent with implementing appropriate regulatory changes that reduce the number of licensing actions needed during decommissioning.

c. Should the requirements be changed so that the timeframe for decommissioning is something other than the current 60-year limit? Would this change be dependent on the method of decommissioning chosen, site specific characteristics, or some other combination of factors? If so, please describe.

No. Also, given the indefinite nature of ISFSI storage on-site as a result of the government's failure to meet its contractual obligations with respect to the removal of spent fuel and GTCC waste from our sites, additional decommissioning tasks relating to the storage pad and storage casks may extend beyond a 60 year period.

REG – 2

Should the current options for decommissioning—DECON, SAFSTOR, and ENTOMB—be explicitly addressed and defined in the regulations instead of solely in guidance documents, and how so?

No. There is no safety need to undertake this activity. The exploration is inconsistent

with implementing appropriate regulatory changes that reduce the number of licensing actions needed during decommissioning.

a. Should other options for decommissioning be explored? If so, what other technical or programmatic options are reasonable and what type of supporting documents would be most effective for providing guidance on these new options or requirements?

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b. Should the requirements be changed so that the timeframe for decommissioning is something other than the current 60-year limit? Would this change be dependent on the method of decommissioning chosen, site specific characteristics, or some other combination of factors? If so, please describe.

No. There is no safety need to undertake this activity. The exploration is inconsistent with implementing appropriate regulatory changes that reduce the number of licensing actions needed during decommissioning.

REG – 3

a. Should the current role of the States, members of the public, or other stakeholders in the decommissioning process be expanded or enhanced, and how so?

The NRC should not impose requirements in this area, as they are not specifically grounded in any radiological health or safety purpose. Moreover, the exploration is inconsistent with implementing appropriate regulatory changes that reduce the number of licensing actions needed during decommissioning.

The relationship between any permanently shutdown facility and its stakeholders is dominated by local factors and relations that the NRC and the federal government are not suited to direct.

b. Should the current role of the States, members of the public, or other stakeholders in the decommissioning process for non-radiological areas be expanded or enhanced, and how so? Currently, for all non-radiological effluents created during the decommissioning process, licensees are required to comply with EPA or State regulations related to liquid effluent discharges to bodies of water.

The states have been active in the affairs of regulatory issues under their statutory purview – as the staff points out, "licensees are required to comply with EPA or

State regulations related to liquid effluent discharges to bodies of water" – at DPC sites. Expansion of states' role in non-radiological effluent matters under NRC regulations should only be undertaken if there were a radiological health and safety issue to be addressed or a cost-beneficial radiological safety improvement to be gained by such an expansion. As the staff has indicated in the ANPR that is not the case, an expansion is not warranted.

c. For most decommissioning sites, the State and local governments are involved in an advisory capacity, often as part of a Community Engagement Panel or other organization aimed at fostering communication and information exchange between the licensee and the public. Should the NRC's regulations mandate the formation of these advisory panels?

There is no demonstrated safety need for the NRC to require such panels.

The establishment of Community Advisory Panels or Community Engagement Panels has been a useful tool for licensees and local stakeholders to share information and to have questions addressed in a forum dominated by local stakeholders and their needs, etc. One to date has been established by state law, others have been locally devised, and other communities have not seen a need to establish a panel. Each existing panel has had or is having a maturation process and has evolved according to local factors and concerns. [iii]

Questions related to the application of backfitting protection to decommissioning power reactor licensees

BFP - 1

a. Backfitting and issue finality during decommissioning can be divided into two areas: When a licensee's licensing basis for operations continues to apply during decommissioning until: (1) the licensee changes the licensing basis, (2) the NRC's regulations set forth generic criteria delineating when changes can be made to the licensing basis, or (3) the NRC takes a facility-specific action that changes the licensee's licensing basis. Why would backfitting protection apply in this area?(Isn't this a legal question?)

[iii] The states (under state regulatory authority) as well as members of the public and other stakeholders (through voluntarily established Decommissioning Community Advisory Boards) have had a direct and active role in prior nuclear plant decommissionings, site restorations (radiological and non-radiological), and spent fuel management processes. We do not see a need or basis for the Commission to address this question in the decommissioning rulemaking as there is no direct safety nexus that warrants a Commission regulation mandating the formation of advisory panels. Further, for example, the charters establishing the decommissioning community advisory panels, boards, and committees in the four New England states were all different and site/state specific. Accordingly, the NRC should neither mandate the formation of such panels or their scope/composition in the decommissioning rulemaking.

The backfit rule and issue finality should be extended into the post-shutdown and decommissioning period, and to ISFSI-Only sites, and for the same reasons that the rule presently applies in the operating period. As the staff states in its question, the Commission has already directed the NRC staff through SRM-SECY-98-253 to apply the backfit rule during the period of decommissioning pending a final decommissioning rule.

b. b) When a licensee engages in an activity during decommissioning for which no prior NRC approval was provided, the activity could be required by an NRC regulation or new NRC approval (through an order or licensing action). Why would backfitting protection apply in this area? (Isn't this a legal question?)

Simply because the licensee engages in an activity during decommissioning or spent fuel and GTCC waste storage for which no prior NRC approval is needed does not render the backfit rule inapplicable. The backfit rule should apply – just as it does during the operating life of the plant – whenever a new or amended requirement, or a new or different regulatory interpretation, is imposed on a decommissioning plant. That new requirement or interpretation must be appropriately justified through a backfit analysis.

See also our comments under VII. Cumulative Effects of Regulation, specifically our response to Question #4.

BFP – 2 Should the NRC propose amendments to § 50.109 consistent with the preliminary amendments proposed in SECY-00-0145 that would have created a two-section Backfit Rule: one section that would apply to nuclear power plants undergoing decommissioning and the other section that would apply to operating reactors?

We believe that a section that applies to sites where nuclear power operations have permanently ceased would help clarify their status with respect to the backfit rule.

<u>Questions related to decommissioning trust funds</u>

DTF – 1 Should the regulations in §§ 50.75 and 50.82 be revised to clarify the collection, reporting, and accounting of commingled funds in the decommissioning trust fund, that is in excess of the amount required for radiological decommissioning and that has been designated for other purposes, in order to preclude the need to obtain exemptions for access to the excess monies?

Access to excess monies is not solely applicable to commingled funds but applicable to segregated funds as well. The NRC should provide an annual method to permit a licensee, with a segregated fund, to adjust and transfer monies in excess of the most

recent site-specific radiological decommissioning cost estimate ("DCE"), to other funds within the Nuclear Decommissioning Trust ("NDT").

NRC rules should explicitly allow licensees to make expenditures for spent fuel management and site restoration from funds set aside to such purposes, and should recognize that as long as the licensee remains an electric utility (able to recover its costs through cost of service rates), such allocations are subject to adjustment by order of a Federal or State agency with ratemaking authority. This would allow the ratemaking authority to specify the appropriate, current allocation, and avoid unnecessary exemptions. This would eliminate the need for an exemption for this purpose and the need for unnecessary collections from the ratepayers of regulated utilities if additional funding should be required for activities such as spent fuel and GTCC management and site restoration.

DTF – 2

a. What changes should be considered for §§ 50.2 and 50.82(a)(8) to clarify what constitutes a legitimate decommissioning activity?

None. Refer to NEI 15-06 Use of the Nuclear Decommissioning Trust Fund for clarification.

b. What should be included or specifically excluded in the definition of "decommissioning planning activities?"

Current guidance should continue to be followed.

Current guidance states that, "the staff recognizes that during planning for decommissioning, it is necessary to consider activities leading to license termination and the storage of spent fuel and GTCC waste; therefore, the staff's interpretation of the appropriate use of these planning funds will permit planning for all issues related to the decommissioning of the facility;" and that engineering designs, work package preparation, and licensing activities are appropriate activities for the initial use of the fund.

<u>Questions related to offsite liability protection insurance requirements for decommissioning power reactor licensees</u>

a. Should the NRC codify the current conservative exemption criteria (i.e., 10 hours to take mitigative actions) that have been used in granting decommissioning reactor licensees exemptions to § 140.11(a)(4)?

Yes. The NRC should adopt an approach consistent with the criteria it has used in granting exemptions, recognizing that more realistic methods could be approved in the future.

b. As an alternative to codifying the current conservative exemption criteria (i.e., 10 hours to take mitigative actions), should the NRC codify a requirement to allow decommissioning reactor licensees to generate site specific criteria (i.e., time period to take mitigative actions) based upon a site specific analysis?

Licensees should be allowed to either meet the criteria used for past exemptions (as discussed in a., above) or prepare a site specific analysis that uses methods previously used by a licensee in support of an exemption issued by the NRC.

c. The use of $100 million for primary liability insurance level is based on Commission policy and precedent from the early 1990s. The amount established was a qualitative value to bound the claims from the Three Mile Island accident. Should this number be adjusted?

Licensees, the NRC, and nuclear insurance carriers will need to work together to better quantify the risks associated with permanently shut down or ISFSI Only sites to determine an appropriate reduced level for primary liability based on the risks associated with such sites. This rulemaking need not be delayed while such work takes place but can be included if such discussion conclude on a timely basis.

d. What other factors should be considered in establishing an appropriate primary insurance liability level (based on the potential for damage claims) for a decommissioning plant once the risk of any kind of offsite radiological release is highly unlikely?

None.

<u>Questions related to onsite damage protection insurance requirements for decommissioning power reactor licensees</u>

a. Should the NRC codify the current exemption criteria that have been used in granting decommissioning reactor licensees exemptions from § 50.54(w)(1)? If so, describe why.

Changes to 10 CFR 50.54(w)(1) should reflect an approach consistent with the criteria that have been used in granting exemptions, which provides a sufficient safety basis for assessing onsite damage protection insurance requirements.

b. The use of $50 million insurance level for bounding onsite radiological damages is based on a postulated liquid radioactive waste storage tank rupture using analyses from the early 1990s. Should this number be adjusted? If so, describe.

Since there are no safety concerns that lead to this rulemaking, not at this time.

c. Is the postulated rupture of a liquid radioactive waste storage tank an appropriate bounding postulated accident at a decommissioning reactor site once the possibility of a zirconium fire has been determined to be highly unlikely?

Yes.

<u>General questions related to decommissioning power reactor regulations</u>

GEN – 1 ...(W)hat regulatory changes should be considered that address the performance or condition of certain long-lived, passive structures and components needed to provide reasonable assurance that they will remain capable of fulfilling their intended functions during the decommissioning period.

The need for a power reactor decommissioning rulemaking is not based on safety-driven or security-driven concerns and changes to licensee programs that address the performance or condition of certain long-lived, passive structures and components are not necessary or appropriate to this rule making.

GEN – 2 ...(S)hould minimum operations shift staffing at a permanently shutdown and defueled reactor be codified by regulation?

We believe the NRC must be careful to distinguish between different, significant stages of the decommissioning process. For example, there is no need to require staffing levels outside of the security force at permanently shut down sites that have decommissioned and are ISFSI Only. As some of these same sites do not have and are not required to have certified fuel handlers on staff, there is no safety or security reason to add a regulatory provision for them.

GEN – 3 ...(W)hat regulatory changes should be considered for a permanently shutdown and defueled reactor to prevent ambiguities concerning the meaning of the control room for decommissioning reactors and should minimum staffing levels be specified for the control room?

None. Decommissioning reactors have demonstrated that the command, communications, and monitoring functions performed in the former control room could be readily performed either there or at an alternate onsite location, based on the site-specific needs of a licensee during its decommissioning process.

GEN – 4 Are there any other changes to 10 CFR Chapter I, "Nuclear Regulatory Commission," that could be clarified or amended to improve the

efficiency and effectiveness of the reactor decommissioning process?

No. We benefit from the efforts of the talented staff working on this issue and encourage maximum interagency communication on all of the matters addressed in the ANPR.

GEN – 5 (Cost-Benefit Information)

Some of our members have provided cost data to NEI for inclusion in its response to this question.

Cumulative Effects

1) In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any new proposed requirements including changes to programs, procedures, or the facility?

Subject to our comments under 4), below, it can be made effective on or soon after the publication date.

2) If current or projected CER challenges exist, what should be done to address this situation (e.g., if more time is required to implement the new requirements, what period of time would be sufficient, and why such a time frame is necessary)?

See our comments on 4), below.

3) Do other (NRC or other agency) regulatory actions (e.g., orders, generic communications, license amendment requests, and inspection findings of a generic nature) influence the implementation of the potential proposed requirements?

Yes. The same purposes and intents that caused the Commission to issue this ANPR must guide the development and modification of these "other regulatory actions."

4) Are there unintended consequences? Does the potential proposed action create conditions that would be contrary to the potential proposed action's purpose and objectives? If so, what are the consequences and how should they be addressed?

In order to avoid having the unintended consequence of imposing additional administrative burden on facilities or ISFSI Only facilities, we outlined a process to define ISFSI Only in NRC's regulations in our cover letter.

To do otherwise would jeopardize the objective of reducing the number of licensing

actions needed during decommissioning by the licensee or by the Commission and staff.

5) Please provide information on the costs and benefits of the potential proposed action. This information will be used to support any regulatory analysis performed by the NRC.

Some of our members have provided cost data to NEI for inclusion in its response to this question and to GEN – 5, above. We will be pleased to answer any questions concerning costs at our member facilities.